

Exhibit 171

DRAFT 1 – Copy for SafetyandCareCommitment Website

On Home Page of SafetyandCareCommitment.com website, at bottom right, under Key Topic, replace Microbeads with the following copy:

Key Topic

Talc has over 100 years of ~~safe~~ use in personal care products. Learn more ...

(Link to Ingredient Policies page, insert new item under “Other Materials” and after “Triclosan”, copy to read)

Talc

The Use of Cosmetic Talc in Personal Care Products

Few ingredients have demonstrated the same performance, mildness and safety profile as cosmetic talc, which has been used for over 100 ~~(I don’t think we can link cosmetic talc to 100 years of use)~~ years by millions of people around the world. Talcum powder is made from the mineral, talc. In a powder form, talc helps reduce friction, making it useful for keeping skin dry and helping to prevent rashes. Talc is a common ingredient found in cosmetic products such as baby powder and adult body and facial powders, and in a range of other consumer products such as toothpaste, chewing gum, and aspirin.

JOHNSON’S® talc products are made using U.S. Pharmacopeial (USP) grade talc to ensure it meets the highest-quality, purity and compliance standards. Our talc-based consumer products ~~are have always been~~ ~~(we cannot say “always”)~~ asbestos free, as confirmed by regular testing conducted since the 1970s. We also make JOHNSON’S® Baby Powder that contains cornstarch.

Our Position on Talc

At the Johnson & Johnson Family of Consumer Companies, our confidence in the using talc is based on a long history of safe use and more than 30 years of research by independent researchers, scientific review boards and global regulatory authorities. Various agencies and governmental bodies have examined whether talc is a carcinogen, and none have concluded that it is. These include the U.S Food and Drug Administration (FDA) and National Toxicology Program, part of the U.S. Department of Health and Human Services. California does not list cosmetic talc as a carcinogen under its Prop 65 list of substances identified as possible causes of cancer.

The Cosmetic Ingredient Review (CIR) is an independent scientific body that assesses the safety of ingredients and publishes results in peer-reviewed science journals. In April 2013 it published its most recent assessment of talc used in cosmetics. Its Expert Panel reviewed all information, data, studies spanning from 1976 through today, and concluded that talc was safe for use in personal care products. The U.S. FDA considers the CIR review, as well as other information, in policy making.

Various independent researchers have studied talc and perineal use and found it to be safe. A detailed meta-analysis done by Muscat/Huncharek in 2007, reviewed all available studies and showed no cause and effect relationship between perineal use and ovarian cancer. In 2011, Neill et al also was not able to find any association between perineal talc use and ovarian cancer. Publications based on the Nurses' Health Study, the only large-scale prospective study looking at talc and ovarian cancer, have found no causal relationship between talc and ovarian cancer (Gertig 2000; Gates 2009).

References and Resources:

NOTE TO CAROL/JAY: Besides those below, there are other links to consider, but they are not as definitive or supportive and could be interpreted as suggesting a causal effect, such as the American Cancer Society and IARC. Even some of the studies we cite send mixed messages. For example, Gertig et al concludes:

"Our results provide little support for any substantial association between perineal talc use and ovarian cancer risk overall; however, perineal talc use may modestly increase the risk of invasive serous ovarian cancers."

National Toxicology Program

<http://ntp.niehs.nih.gov/index.cfm?objectid=03CA6E02-FBD5-5C52-9699F9DD00863ED7>

Cosmetic Ingredient Review

http://www.cir-safety.org/sites/default/files/talc122012tent_faa_final%20for%20posting.pdf

Gertig, Prospective Study of Talc Use and Ovarian Cancer, *Journal of the National Cancer Institute*

<http://jnci.oxfordjournals.org/content/92/3/249.full>

Neill, Use of talcum powder and endometrial cancer risk, *Cancer Causes and Control*

<http://rd.springer.com/article/10.1007%2Fs10552-011-9894-5>

Muscat, Perineal talc use and ovarian cancer risk: a case study of scientific standards in environmental epidemiology, *European Journal of Cancer Prevention*

<http://www.ncbi.nlm.nih.gov/pubmed/21712717>

From Homer:

<http://www.fda.gov/Cosmetics/ProductandIngredientSafety/SelectedCosmeticIngredients/ucm293184.htm?source=govdelivery>

FDA sponsored a workshop in 1994 (“IS RTP/FDA Talc workshop”). I don’t have a copy of the report but there are many references to the conclusions, such as those below. Experts agreed that there was no evidence to conclude that talc is capable of reaching the ovaries. And ... the experts attending the IS RTP/FDA Talc workshop concluded that the epidemiology studies did not demonstrate a real association between talc and ovarian cancer.

<http://www.cosmeticsinfo.org/HBI/26>

<http://www.thefactsabout.co.uk/content.asp?pageid=8&menuname=Talc&menu=hidden>

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Exhibit 172

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DISTRICT OF NEW JERSEY

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MDL NO:

16-2738 (FLW) (LGH)

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LITIGATION

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Tuesday, June 29, 2021

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LEVIN, PAPATONIO, RAFFERTY, PROCTOR, BUCHANAN, O'BRIEN, BARR & MOUGEY, P.A. BY: CHRISTOPHER V. TISI, ESQ. 316 South Baylen Street, Suite 600 Pensacola, Florida 32502-5996 850-435-7176 ctisi@levinlaw.com For the Plaintiff, Vickie Forrest</p> <p>7 COHEN, PLACITELLA & ROTH BY: CHRISTOPHER M. PLACITELLA, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 cplacitella@cprlaw.com For the MDL Plaintiffs</p> <p>13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP BY: ALLISON M. BROWN, ESQ. and RICHARD T. BERNARDO, ESQ. One Manhattan West New York, New York 10001-8602 212-735-3000 allison.brown@skadden.com richard.bernardo@skadden.com For the Defendant, Johnson & Johnson</p> <p>19 YETTER COLEMAN LLP BY: COLLIN J. COX, ESQ. 811 Main Street, Suite 4100 Houston, Texas 77002 713-632-8000 ccox@yettercoleman.com For the Witness</p> <p>23 ALSO PRESENT:</p> <p>24 JOEL SCHNEIDER, USMJ (Retired)</p>	<p style="text-align: right;">Page 4</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 COHEN, PLACITELLA & ROTH BY: DENNIS M. GEIER, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 dgeier@cprlaw.com For the MDL Plaintiffs</p> <p>7 GOLOMB SPIRT GRUNFELD PC BY: RICHARD GOLOMB, ESQ. 1835 Market Street, Suite 2900 Philadelphia, Pennsylvania 19103 215-985-9177 rgolomb@golomblegal.com For the MDL Plaintiffs</p> <p>13 BARNES LAW GROUP, LLP BY: JOHN R. BEVIS, ESQ. 31 Atlanta Street Marietta, Georgia 30060 678-290-2240 bevis@barneslawgroup.com For the Plaintiffs</p> <p>17 ROBINSON CALCAGNIE, INC. BY: GENEVIEVE R. OUTLAW, ESQ. 19 Corporate Plaza Drive Newport Beach, California 92660 949-720-1288 goutlaw@robinsonfirm.com For the Plaintiffs in JCCP 4872</p>
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<p style="text-align: right;">Page 310</p> <p>1 A. No.</p> <p>2 Q. Okay. So let's go back 25</p> <p>3 years to 1995 then and talk about it. I</p> <p>4 want to ask you a question that I asked</p> <p>5 you, from the date of Dr. Muscat's study</p> <p>6 that wasn't done until 2018 when you left,</p> <p>7 are you aware of any study conducted by</p> <p>8 Johnson & Johnson looking specifically at</p> <p>9 the relationship between talc and ovarian</p> <p>10 cancer?</p> <p>11 MS. BROWN: Objection.</p> <p>12 Lacks foundation.</p> <p>13 BY MR. TISI:</p> <p>14 Q. If you don't know, then the</p> <p>15 answer is I don't know.</p> <p>16 A. I'm not aware of what they may</p> <p>17 have conducted, what studies they did or</p> <p>18 did not. I just wouldn't have that</p> <p>19 knowledge.</p> <p>20 Q. Have you seen any come up in</p> <p>21 litigation?</p> <p>22 MS. BROWN: Objection.</p> <p>23 He's not going to talk about</p> <p>24 litigation.</p>	<p style="text-align: right;">Page 312</p> <p>1 see the press releases or communications</p> <p>2 refer to any study that Johnson & Johnson</p> <p>3 did or funded?</p> <p>4 MS. BROWN: Objection.</p> <p>5 Lacks foundation. Misstates the</p> <p>6 evidence.</p> <p>7 THE WITNESS: I think</p> <p>8 they're two different things from</p> <p>9 what I'm recalling. I'm recalling</p> <p>10 some public communication</p> <p>11 statements and you're asking me did</p> <p>12 those statements contain what</p> <p>13 again?</p> <p>14 BY MR. TISI:</p> <p>15 Q. Do you ever remember, I mean,</p> <p>16 this really isn't that complicated a</p> <p>17 question. Do you remember, as you sit here</p> <p>18 today, any of the communications that were</p> <p>19 made by the company that refer to any study</p> <p>20 that Johnson & Johnson did?</p> <p>21 MS. BROWN: Objection.</p> <p>22 Lacks foundation.</p> <p>23 THE WITNESS: The only</p> <p>24 thing I recall, Johnson & Johnson</p>
<p style="text-align: right;">Page 311</p> <p>1 BY MR. TISI:</p> <p>2 Q. You made public statements</p> <p>3 about litigation, did you not?</p> <p>4 A. I don't recall that.</p> <p>5 Q. In any of the press releases</p> <p>6 that you reviewed, did they comment on</p> <p>7 litigation?</p> <p>8 MS. BROWN: Objection,</p> <p>9 lacks foundation, assumes facts,</p> <p>10 misstates the evidence.</p> <p>11 THE WITNESS: I think</p> <p>12 there might have been -- a press</p> <p>13 release?</p> <p>14 BY MR. TISI:</p> <p>15 Q. Yeah.</p> <p>16 A. I don't recall.</p> <p>17 Q. Press release or comments to</p> <p>18 the public relations or any of those</p> <p>19 things.</p> <p>20 A. You know, I do recall seeing</p> <p>21 public communications documents that talked</p> <p>22 about the litigation that has happened,</p> <p>23 yes.</p> <p>24 Q. In any of those, did you ever</p>	<p style="text-align: right;">Page 313</p> <p>1 referred to the studies that were</p> <p>2 done by outside agencies and that</p> <p>3 sort of thing.</p> <p>4 BY MR. TISI:</p> <p>5 Q. Okay. But Johnson & Johnson,</p> <p>6 to your knowledge, never did any of their</p> <p>7 own, did they?</p> <p>8 MS. BROWN: Lacks</p> <p>9 foundation.</p> <p>10 THE WITNESS: On what?</p> <p>11 BY MR. TISI:</p> <p>12 Q. On talc and ovarian cancer?</p> <p>13 A. On what though, studies?</p> <p>14 Q. Yes.</p> <p>15 A. On talc and ovarian cancer?</p> <p>16 Q. Yes.</p> <p>17 A. I'm not aware of what they did</p> <p>18 or didn't do.</p> <p>19 Q. Okay. But what you did do and</p> <p>20 what was recommended to you was to attack</p> <p>21 the studies done by others, true?</p> <p>22 MS. BROWN: Objection.</p> <p>23 Misstates the evidence. Lacks</p> <p>24 foundation.</p>

Exhibit 173

In the Matter Of:

TERESA LEAVITT/FONG and WONG vs JOHNSON & JOHNSON, et al.,

JAMES MITTENTHAL (PMQ/COR)

October 18, 2018

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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TERESA ELIZABETH LEAVITT
and DEAN J. MCELROY,
Plaintiffs,

vs.

JOHNSON & JOHNSON, et
al.,

No. RG17882401

Defendants.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

---000---

PUI FONG and THAI WONG,
Plaintiff,

vs.

JOHNSON & JOHNSON, et al.,

JCCP CASE NO. 4674

No. BC675449

Defendants.

TRIAL PRESERVATION
VIDEOTAPED DEPOSITION OF JAMES PETER MITTENTHAL
(PMQ/COR Johnson & Johnson; Johnson & Johnson
Consumer, Inc.)

VOLUME II, Pages 219 - 443

Taken before EARLY K. LANGLEY, B.A., RMR, RSA, CLR
CSR No. 3537

October 18, 2018

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DEPOSITION OF JAMES PETER MITTENTHAL

BE IT REMEMBERED, that pursuant to Notice, and
on October 18, 2018, commencing at the hour of 9:05
a.m., in the offices of Kazan, McClain, Satterley &
Greenwood, 55 Harrison Street, Suite 400, Oakland,
California 94607, before me, EARLY LANGLEY, a Certified
Shorthand Reporter, State of California, personally
appeared JAMES PETER MITTENTHAL, produced as a witness
in said action, and being previously duly sworn, was
thereupon examined as a witness in said cause.

---oOo---

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Mines Corporation; Imerys Talc Vermont, Inc.;
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11 Also present:

12 Jonathan Jaffe
13 ESI Consultant

14 Jim Partridge
15 Tele-Video Production Services
16
17
18
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22
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24
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1 --oOo--

2 P R O C E E D I N G S

3 --oOo--

4 THE VIDEOGRAPHER: We're on the record.
5 My name is Jim Partridge. I'm a qualified video
6 technician video recording on behalf of Tele-Video
7 Production Services.

8 The court reporter today is Early Langley
9 of Aiken Welch Reporters.

10 Today's date is October 18, 2018. The
11 time is now 9:05 a.m. The location of this
12 deposition is the Kazan and McClain law firm in
13 Oakland, California.

14 Today's witness is James Mittenthal. This
15 is Volume Number II in the case of Leavitt and
16 McElroy, et al. v. Johnson & Johnson and Fong, et
17 al. v. Imerys Talc America, Inc.

18 This is Case Number RG17882401 filed in
19 the Superior Court of California in and for the
20 County of Alameda.

21 This deposition was noticed by the Kazan
22 law firm for the plaintiff.

23 Would the counsel for the parties please
24 identify themselves and for whom they are
25 appearing.

1 MR. SWANSON: Mark Swanson appearing on
2 behalf of the plaintiffs.

3 MR. CARPENTER: Good morning, sir. Erin
4 Carpenter appearing on behalf of Imerys Talc
5 America, Inc.; Imerys Talc Vermont; and Cyprus
6 Mines Corporation.

7 MR. COX: Christopher Cox on behalf of
8 defendants Johnson & Johnson and Johnson & Johnson
9 Consumer, Inc.

10 THE VIDEOGRAPHER: And on the telephone,
11 please.

12 MR. BERNARDO: Richard Bernardo, also
13 counsel for the Johnson & Johnson defendants.

14 JAMES PETER MITTENTHAL
15 previously sworn as a witness,
16 testified as follows:

17 THE VIDEOGRAPHER: Would the counsel
18 please state any stipulations or statements they
19 would like on the record.

20 None.

21 Counsel, you may proceed.

22 DIRECT EXAMINATION BY MR. SWANSON (Cont'd):

23 Q. Good morning, Mr. Mittenthal.

24 A. Good morning.

25 Q. You understand that you're still under

1 oath?

2 A. Yes, I do.

3 Q. Okay. What work have you done in
4 connection with the Fong and/or Leavitt cases
5 since I deposed you on September 21st in the first
6 volume?

7 A. So I gathered additional materials,
8 retention schedules. I conducted follow-on
9 interviews with Pamela Downs and Laura Giacino,
10 and a woman named Tina French was also present for
11 that other interview for the purpose of
12 understanding additional information about Fong
13 and Leavitt collection activities.

14 Q. Okay.

15 A. I obtained -- requested and obtained a
16 list of legal holds that encompassed consumer talc
17 and I made a list of those holds.

18 Q. From whom did you --

19 MR. SWANSON: Before I ask the question,
20 Early could you read that entire answer back to me
21 please.

22 (Record read by the court reporter.)

23 BY MR. SWANSON:

24 Q. Okay. And those retention schedules that
25 you gathered, did you actually do the search for

1 those and obtain those or did you get those from
2 counsel?

3 A. I got those from counsel.

4 Q. Okay. And those holds are for what period
5 of time?

6 A. The holds cover -- the earliest hold that
7 I received was dated 1999.

8 Q. And these were additional holds that had
9 not previously been produced to the plaintiffs; is
10 that correct?

11 A. These were holds that were related to, to
12 my understanding, issues other than mesothelioma.

13 Q. Now, these legal holds that you're talking
14 about -- well, let me -- let me -- because I think
15 I got myself confused or maybe you confused me.
16 The additional materials that you gathered were
17 retention policies; right?

18 A. I -- I gathered -- that was one of the
19 things I got, yes, were additional retention
20 schedules.

21 Q. And you gathered those -- you got those
22 from counsel; correct?

23 A. Yes.

24 Q. And why did you get those?

25 A. I was -- in an effort to respond to issues

1 raised in the last time to provide the most
2 thorough coverage of the retention schedules
3 during the applicable times, I sought to get
4 what -- the retention schedules that were
5 available.

6 Q. So those were retention schedules that
7 hadn't been produced to the plaintiffs in Fong and
8 Leavitt up to that point; is that correct?

9 MR. COX: Object to form.

10 THE WITNESS: Some of them had not been
11 produced yet.

12 BY MR. SWANSON:

13 Q. Have they all been produced now?

14 MR. COX: Object to form.

15 THE WITNESS: That's -- that's my
16 understanding.

17 BY MR. SWANSON:

18 Q. And what period -- can you give me the
19 period of time that those holds cover?

20 A. I'm sorry?

21 Q. The range of years for those retention --
22 did I say "holds"?

23 A. Yes, sir.

24 Q. I apologize. I'm getting myself confused.

25 For those retention schedules that you

1 obtained from counsel after your first volume of
2 your deposition that you say have been produced,
3 what's the range of years they cover?

4 A. They went back to the 1997.

5 Q. And did you bring those with you today?

6 A. I believe they're all -- I'm not sure
7 what's in this binder. I believe that everything
8 has been brought today.

9 Q. Okay. For your information, the binder
10 contains the exhibits to the first volume of your
11 deposition. So that if I have a question for --
12 and that was the binder that you brought to that
13 deposition.

14 Do you remember that?

15 A. Yes.

16 Q. Okay. So if I have questions about a
17 prior exhibit, then you can refer to what's in the
18 binder, okay?

19 A. Okay.

20 Q. All right. So what was produced
21 subsequent to the first volume of your deposition
22 to us were additional retention schedules for the
23 period 2004 through 2012. Now, we did have a
24 prior retention schedule that had previously been
25 introduced and was marked for the record in your

1 original binder going back to 1997.

2 Does that refresh your memory about what
3 you've seen recently or did you see additional
4 retention schedules going back to '97 that either
5 weren't produced in this 2004 to 2012 range that
6 was subsequently produced and wasn't produced in
7 the initial production?

8 A. The former. That refreshes my memory.

9 Q. So you spoke to Pamela Downs, Tina French,
10 and Laura Giacino?

11 A. That's correct.

12 Q. All in the same place?

13 A. There was a conversation with Ms. Downs
14 and then there was a second conversation with
15 Ms. Giacino and Ms. French.

16 Q. Remind us again. Pam Downs, she -- Pamela
17 Downs she worked for Triality; is that right?

18 A. That's right.

19 Q. And where did that interview take place?

20 A. That was -- that was at Skadden offices.

21 Q. And what day did that take place?

22 A. I'd have to double-check. It was -- it
23 was last week.

24 Q. How long did it last?

25 A. A couple of hours.

1 Q. Who else was there?

2 A. Chris Cox.

3 Q. And what additional information specific
4 to either what we spoke about in Volume I of your
5 deposition or that's related to these two cases,
6 Leavitt and Fong, did you discuss with Pam Downs?

7 A. I wanted to clarify and understand the
8 extent of the -- her -- her involvement in
9 specific searches related to Fong and Leavitt
10 beyond what had been captured in my original notes
11 from her.

12 Q. And what did she tell you with respect to
13 that?

14 A. Well, basically I -- I created -- as we
15 were talking, I created a Word table on my
16 computer and that table contained six or seven
17 columns, and as we spoke, I filled out the -- the
18 table, and that table is with me today.

19 Q. Okay. Do you have a copy of that table
20 for me?

21 MR. COX: I do.

22 MR. SWANSON: Okay. And do you have a
23 copy I can mark or his copy -- oh, his copy I can
24 mark.

25 Mr. Mittenthal, can I mark your -- put an

1 exhibit tag on your copy?

2 THE WITNESS: Sure.

3 MR. SWANSON: Okay.

4 (Whereupon, Plaintiff's Exhibit 20 was
5 marked for identification.)

6 BY MR. SWANSON:

7 Q. And how many pages -- this is four pages.

8 So the Word doc -- the Word table that you
9 created with respect to Pam Downs that's marked as
10 Exhibit 20, that's a four-page document, and we'll
11 just have to make sure to keep these separate from
12 these others.

13 Is that okay if I separate these?

14 A. Sure.

15 Q. Okay. There you go. And I'll hand those
16 back to you.

17 And it looks like you also included in
18 this information that you've gathered from Laura
19 Giacino; correct?

20 A. Yes. I took the same document and I
21 continued it.

22 Q. And so does this document summarize what
23 you learned from both of them regarding searches
24 specific to Leavitt and Fong?

25 A. Yes.

1 Q. How long did you speak to Laura Giacino?

2 A. It was about an hour and a half, as I
3 recall.

4 Q. And who else was there during that
5 conversation?

6 A. That was a telephone call. Tina French
7 was present with Ms. Giacino.

8 Q. And who is Tina French?

9 A. She is an assistant corporate secretary.

10 Q. Did you speak to them while -- let's start
11 with Pamela Downs.

12 Did you speak to her about anything other
13 than just what specific searches had been done
14 related to Leavitt and Fong?

15 A. That's my recollection, yes.

16 Q. And is that the same with Laura Giacino?

17 A. Yes.

18 Q. Was there any information that Tina French
19 provided?

20 A. I mean, there were -- there were times
21 when they were both talking. It was -- it was
22 really an interview with Ms. Giacino. It was
23 announced that Ms. French was also on the phone
24 and she occasionally piped in with information.
25 It was not always clear which one was talking.

1 Generally, Ms. Giacino led the call.

2 Q. Can you explain to me by giving me an
3 example how this table works that you created?

4 A. Well, the -- it was initially to be tied,
5 and I worked with counsel to get the -- in terms
6 of those, the specific case, Leavitt or Fong, and
7 the request so that I could tie the searches back
8 to a specific request for production.

9 The -- the next element is a -- is a --
10 simply a category, and the -- this table, for the
11 sake of convenience, the post- -- the later
12 searches specific to Leavitt and Fong materials,
13 and those -- and the requests for production. But
14 the later searches were categorized for the -- for
15 the sake of understanding the circumstances for
16 each.

17 This table speaks to what -- denoted as
18 Category 3 and 4, which, as per the legend, are
19 additional searches of company sources and
20 first-time searches of company sources.

21 The other two categories that relate to
22 the additional collection efforts, Category 1
23 target searches of the global production and
24 refiltering of the previously collected unproduced
25 material, did not involve additional on-the-ground

1 document-gathering. So they -- only the
2 on-the-ground collection activities were included
3 in this table.

4 Q. Okay. And I see there's a column here for
5 "people consulted."

6 What does that refer to?

7 A. So I -- in my conversations with
8 Ms. Downs, I said, who did you go to, to identify
9 this -- sources of this additional information,
10 where it might be, what might be obtainable, and
11 so the people consulted would be the people who
12 would be -- either have a custodial relationship
13 to the data or knowledge of where it might be.

14 Q. And then "areas searched," that is
15 physically what they were actually searching?

16 A. Yes.

17 Q. Do you know, from your notes or from your
18 memory if we went through, who did the actual
19 searches?

20 A. I -- I don't. I understand that the
21 people consulted were involved. I don't know who
22 physically did the hands-on searches. Or, in the
23 case of the computer systems, I guess I would call
24 those hands-on as well. But the actual searches.
25 It was certainly under attorney supervision.

1 Q. And then you've got another column,
2 "search criteria"; correct?

3 A. Yes.

4 Q. So just looking at this second one under
5 "industrial hygiene" for Leavitt. It's Request
6 Number 46 and Request for Production Set Number 3,
7 it says here the search criteria is "knowledge of
8 file names and key words for talc and asbestos."

9 So what do they actually look -- first of
10 all, let me see if I can get an idea of what
11 happened in that search. What was -- whoever
12 did -- do we know who did the search, the actual
13 search here?

14 A. I don't know who performed the search
15 except to say that it was based on the knowledge
16 of Vivian Pai and Reed Holbrook.

17 Q. And it says, "Looked for missing
18 information from earlier archive searches,
19 departmental share."

20 So what were they actually searching? Was
21 this a database search that they are's doing? Are
22 they doing a search of physical archives? What's
23 actually being searched?

24 A. I would understand that they looked in
25 both the -- the ERMS archive as well as the

1 network share drive.

2 Q. Now, on some of these others, you actually
3 did put EMRS (sic) here and you didn't put that
4 here, so I'm curious. Are you guessing when you
5 say they looked at ERMS?

6 A. Well, when Ms. Downs used the word
7 "archive searches," that's what I interpreted her
8 to be referring to.

9 Q. Okay. And that's what we discussed at
10 length in Volume I was the ERMS searches that --
11 it's kind of an indexing system; correct?

12 A. For files in off-site --

13 MR. COX: Object to form.

14 THE WITNESS: Sorry.

15 MR. COX: Go ahead.

16 THE WITNESS: Files in off-site storage
17 and in certain cases files that are on -- in
18 company facilities.

19 BY MR. SWANSON:

20 Q. It says, "Knowledge of file names and key
21 words for talc and asbestos."

22 That's the search criteria. What does
23 that mean?

24 A. I understood that to mean that, with
25 respect to the file shares, that between Ms. Pai

1 and Mr. Holbrook, they looked for certain -- they
2 scanned the list of file names in the departmental
3 share and looked for files that they knew would be
4 named accordingly.

5 The key words I took to mean terms that
6 were applied to the searches of the ERMS.

7 MR. SWANSON: Madam Court Reporter, can
8 you read that back, please.

9 (Record read by the court reporter.)

10 BY MR. SWANSON:

11 Q. I don't understand. They're looking for
12 file names where?

13 A. In the share drive. So, for instance, it
14 may be denoted as the L drive or the whatever
15 drive letter is associated with an area on the
16 company's computer network where they -- everyone
17 can contribute and deposit files, Microsoft office
18 files, other files that are at the departmental or
19 work group level.

20 Q. So this is -- which company are we talking
21 about here? The share files?

22 A. My understanding would be corporate --

23 Q. Go ahead.

24 A. Well, Ms. -- Ms. Pay -- Pai would have
25 been in the corporate area, so she would have

1 consulted a corporate share.

2 Q. Okay. So when you say "corporate share,"
3 you mean Johnson & Johnson proper?

4 A. That's my understanding.

5 Q. Are you guessing or that's what you --

6 A. Well, the notation for her title was WW.
7 So "Worldwide" would -- I believe, and I -- that's
8 what I took "WW" to denote.

9 I did not follow up and determine her
10 corporate affiliation. I see that I
11 wrote "corporate," so I -- by all indicia, she is
12 part of the corporate organization as opposed to
13 consumer. I did not independently reference
14 her -- you know, look her up in the directory or
15 anything like that.

16 Q. And how far back is the information
17 that's -- or documents and information there on
18 their share drives, do you know?

19 A. My understanding is that the -- the
20 information in share drives is generally
21 persistent. It is not -- it is not subject to
22 disposition. There may be -- they may have the
23 ability to perform retention on it, but I -- my
24 understanding is that that material is -- just
25 stays on the share drive.

1 Q. And what's the original source of those
2 materials?

3 A. Oh, those would be documents that authors
4 had placed there or people who had received them
5 had placed there. So it is -- you know, because
6 it's a share drive, it does not necessarily tell
7 us how something got there. It -- we may be able
8 to look at meta data and see who put it there
9 originally, but there's not really a story that's
10 told in the -- in the file share as to how
11 something got there. Therefore, I believe
12 Ms. Downs relied on these people's memory to
13 understand where to look in the share drive that
14 would be for the relevant information.

15 Q. So are these share drives like small
16 companies have where a bunch of information just
17 gets dumped in shared files -- in a shared drive?

18 MR. COX: Object to the form.

19 THE WITNESS: Well, I -- I understand that
20 at Johnson & Johnson -- and I've heard that the
21 term "L drive" being referred to denote areas
22 where there is a shared directory.

23 Now, that might be different for, let's
24 say, marketing versus R&D, but, generally
25 speaking, the company makes share drives available

1 to users to place information on, and that's
2 determined by the department as to how people use
3 it.

4 Q. Is there -- is there some kind of standard
5 operating procedure about what gets put there and
6 what gets retained there and what gets removed and
7 who removes it?

8 MR. COX: Object to the form.

9 THE WITNESS: Well, to my understanding,
10 the company's retention policies do not speak to
11 what I call "containers" or "vehicles."

12 So, in other words, the L drive, the share
13 drive, would be simply a place to store
14 information. The -- the policies or retention
15 schedules relate to the purpose, the use of the
16 document, the fact that it may be classified
17 according to a retention schedule based on its --
18 its content and purpose. That's what would
19 determine how it's treated as opposed to whether
20 it's on a share drive or some other location.

21 BY MR. SWANSON:

22 Q. I'm sure I'll have questions about that
23 later.

24 So you gathered a list of holds; correct?

25 A. Yes, I did.

1 Q. Okay. And can you -- do you have multiple
2 copies of that?

3 MR. SWANSON: So let's mark that as -- let
4 me mark yours -- as Exhibit 21 to your deposition.

5 (Whereupon, Plaintiff's Exhibit 21 was
6 marked for identification.)

7 BY MR. SWANSON:

8 Q. When did you compile the list of holds?

9 A. Last week.

10 Q. Okay. And I know some of these were
11 produced to us previously and some were produced
12 subsequently to the plaintiffs in these cases. I
13 have seen these.

14 Is this a complete list of all of the
15 Johnson & Johnson holds with respect to talc
16 litigation?

17 MR. COX: Object to the form.

18 THE WITNESS: I requested holds relating
19 to consumer -- consumer talc.

20 BY MR. SWANSON:

21 Q. And is this the complete list of
22 historical holds related to consumer talc?

23 MR. COX: Object to the form of the
24 question.

25 THE WITNESS: This is my understanding of

1 what was -- what was found to satisfy my request.

2 BY MR. SWANSON:

3 Q. What specifically was your request?

4 A. For holds relating to consumer talc.

5 Q. And is the spokesperson for Johnson &
6 Johnson, then, this -- you have no information of
7 any prior legal holds related to consumer talc,
8 consumer talc litigation; correct?

9 MR. COX: Object to the form.

10 THE WITNESS: That's correct.

11 BY MR. SWANSON:

12 Q. Did you interview anybody about legal
13 holds or did you ask -- just ask counsel for
14 whatever legal holds they had?

15 A. I spoke with counsel.

16 Q. And by the way, in between the two
17 depositions, how much time have you spent speaking
18 to Johnson & Johnson's counsel?

19 A. I was on site probably five or six times,
20 either working by myself or working with counsel.
21 Probably -- with counsel, perhaps 15 to 20 hours.

22 Q. And you say "on site," you mean at the
23 Skadden law firm offices?

24 A. Yes.

25 Q. Is there anything that you spoke to Pamela

1 Downs or Laura Giacino related to Johnson &
2 Johnson that is not summarily reflected in your
3 notes?

4 MR. COX: Object to the form.

5 Go ahead.

6 THE WITNESS: Of course, my prior
7 conversations with Ms. Downs are in my other
8 notes. But in terms of the current time period,
9 it's all in here.

10 BY MR. SWANSON:

11 Q. Were any searches done or inquiries done
12 to -- were any inquiries or searches done to
13 locate responsive documents, other than you
14 requesting holds and retention schedules,
15 responsive documents to the plaintiff's requests
16 in the Leavitt and Fong cases subsequent to your
17 first volume of your deposition?

18 MR. COX: Object to the form.

19 THE WITNESS: I -- if I understand your
20 question correctly, I don't have complete
21 knowledge of that. I know that additional
22 materials have been provided to plaintiffs,
23 additional retention schedules of company
24 policies. I updated -- some of my materials that
25 I worked on with counsel that were updated had

1 been provided.

2 I don't know about searches.

3 Q. Okay. So, other than the additional
4 retention schedules and the worldwide records and
5 information policy being produced and the
6 additional holds, you're not aware of any other
7 searches being done since September 24th; correct?

8 A. Well, I wouldn't -- I wouldn't be aware.
9 I mean, I'm not privy to that -- to that in terms
10 of the ongoing communications between plaintiff
11 and defendants.

12 Q. I understand. But your role here is to
13 talk about searches that were done, and I'm just
14 simply asking, since September 24th, are you aware
15 of any other searches being done other than for
16 the items that we just mentioned with respect to
17 holds, retention policies and...

18 A. I see. No. I'm only aware of that, that
19 which has been listed in the sheet.

20 Q. And I believe that -- you just mentioned
21 that you've updated some notes specific to these
22 cases; is that correct?

23 A. Yes.

24 MR. SWANSON: Do you have a copy of that,
25 Chris? Thank you.

1 So let's mark this as Exhibit 22 to your
2 deposition. If you give me your copy, let me mark
3 that.

4 THE WITNESS, oh sure.

5 (Whereupon, Plaintiff's Exhibit 22 was
6 marked for identification.)

7 BY MR. SWANSON:

8 Q. What is Exhibit Number 22?

9 A. This was an updated version of a document
10 that I worked on with counsel, and it's basically
11 simply a list of the noticed deposition topics
12 that I received, coupled with some of the produced
13 materials that correspond to them.

14 Q. And this is an update of a document you
15 previously produced; is that right?

16 A. Yes.

17 Q. And I believe we previously attached that,
18 but I'll sort that out later.

19 Did you -- are there any other reports or
20 writings or notes that you made subsequent to
21 September 24th regarding this deposition in the
22 Leavitt and Fong cases?

23 A. No.

24 Q. I've just been provided today worldwide's
25 records and information management policies, so

1 I'm not going to get into the particulars of
2 the -- all the prior ones, but I do want to go
3 over some basics on those based on the ones that
4 I've actually had an opportunity to review up
5 until now.

6 MR. COX: Mark, I'll just note for the
7 record that the revision history of the documents
8 that you're referring to are actually referenced
9 in the copies you've had for a while now.

10 MR. SWANSON: Oh, okay.

11 BY MR. SWANSON:

12 Q. And we may go over the other ones later or
13 we may just jump to them now if we need to. But
14 I'm going to hand you two of them, which is
15 Version 4.

16 MR. SWANSON: And that's Exhibit 23.

17 (Whereupon, Plaintiff's Exhibit 23 was
18 marked for identification.)

19 MR. SWANSON: And Version 5, which will
20 be -- whoops, that's my copy with my notes on
21 it -- Version 5 of Johnson & Johnson's worldwide
22 records and information management -- records and
23 information management program standard will be
24 Exhibit 24 to your deposition.

25 (Whereupon, Plaintiff's Exhibit 24 was

1 marked for identification.)

2 BY MR. SWANSON:

3 Q. Do you have those in front of you?

4 A. I do.

5 Q. Okay. So, yeah, there's some language at
6 the beginning of this. If you look at Exhibit 23,
7 do you see what it says the policy is at the top?

8 A. Yes, I do.

9 Q. And can you read that out loud?

10 A. "Records and information shall be created,
11 valued, protected, managed, and disposed in
12 accordance with applicable laws, regulations, and
13 the requirements of the worldwide records and
14 information management policy and standards and
15 other applicable Johnson & Johnson policies."

16 Q. This is Version 4 of this, but you've seen
17 prior policies; correct?

18 A. In the past I have, yes.

19 Q. And the initial policy, Version 1, that
20 goes back to 2009; correct?

21 A. I don't recall.

22 MR. SWANSON: Can I mark yours and then
23 print another one? I apologize.

24 (Whereupon, Plaintiff's Exhibit 25 was
25 marked for identification.)

1 BY MR. SWANSON:

2 Q. I'm just going to go ahead and hand you
3 what's marked as Exhibit Number 25. You have that
4 in front of you. And that indicates that the
5 Version 1 of 1.0 of Johnson & Johnson's worldwide
6 records and information management policy was
7 created or -- the date of this policy is July 31,
8 2009; correct?

9 A. Yes.

10 Q. So their -- Johnson & Johnson's worldwide
11 records and information management policy only
12 goes back to 2009; correct?

13 A. This particular policy document, yes, was
14 created in 2009.

15 Q. Well, this is Version 1.0; correct?

16 A. Yes.

17 Q. There's no prior version to that, is
18 there?

19 A. I'm not aware of a worldwide prior
20 version.

21 Q. So this was the first worldwide standard
22 for records and information management policy at
23 Johnson & Johnson; correct?

24 MR. COX: Object to the form.

25 THE WITNESS: Yes.

1 BY MR. SWANSON:

2 Q. And this policy, if you look back at
3 Number 23, Exhibit 23, the policy that is
4 described there at the top of creating, valuing,
5 protecting, managing, disposing in accordance with
6 applicable laws, you know, records and
7 information, that -- does that accurately describe
8 the policy?

9 MR. COX: Object to the form.

10 THE WITNESS: I -- I believe it describes
11 this version of the policy. This is the language
12 of the policy. I don't understand. This is
13 the -- the language from the policy is, I believe,
14 what you were referring to, and that is -- that is
15 the preamble to the policy.

16 BY MR. SWANSON:

17 Q. Okay. So let me ask you this: Is it --
18 since 2009 part of Johnson & Johnson's record and
19 information management policy to create, value,
20 protect, manage, and dispose of information and
21 records in accordance with applicable laws,
22 regulations, and requirements of that policy?

23 MR. COX: Object to the form.

24 THE WITNESS: Well, yes, I've seen it in
25 that language in the Version 1.0, and I believe

1 you're referring to the 4.0 version. I see it
2 there as well.

3 BY MR. SWANSON:

4 Q. Okay. And is that still Johnson &
5 Johnson's philosophy that a record -- their
6 worldwide records and information management
7 policy has to do with managing and disposing of
8 records and information in accordance with various
9 laws, regulations, and legal requirements?

10 A. Is it still the policy today?

11 Q. Yes.

12 A. My understanding is that it is -- it is
13 still the policy today. There is a new category
14 of -- of management of information which is
15 archive, and that archive may be encompassed in
16 the phrase "disposition." In the later versions
17 of the program standard, the archive option was
18 made more explicit.

19 Q. So we have Version 5 here. Is that the
20 most recent version?

21 And that's Exhibit -- what did we mark
22 that as? 24?

23 A. 24.

24 Q. Is that -- is this the most recent
25 version, Exhibit 24?

1 A. I'd want to check my notes to confirm
2 that.

3 Q. Now, if you look at Exhibit 24 -- 23, if
4 you look at the second page of this, you see
5 under "provisions"?

6 A. I'm sorry, did you say "24" or "23"?

7 Q. 23.

8 A. Yes. I'm there.

9 Q. Okay. And here -- it says here, "Records
10 and information shall be retained in accordance
11 with the Johnson & Johnson enterprise retention
12 schedule in accordance with applicable legal
13 holds. When a record or information retention
14 requirement is reached, it shall be disposed of in
15 accordance with this policy and associated WWRAM
16 (sic) standards and in compliance with operating
17 company procedure."

18 Do you see that?

19 A. Yes.

20 Q. So the idea of having this management
21 policy is that it -- it's addressing how to
22 preserve and dispose of documents and the two
23 tools that are being used in conjunction to make
24 those determination are retention schedules and
25 legal holds; correct?

1 A. Yes.

2 Q. And that's still the policy; correct?

3 A. To my understanding, yes.

4 Q. And so -- and it says there, when -- when
5 a retention requirement is reached, a record
6 information "shall be disposed of." Right? In
7 accordance with the policies.

8 So when you reach a retention schedule,
9 the limit of how long something has to be held, if
10 there's no legal hold in place, it gets disposed
11 of typically; correct? That's the idea of this
12 policy; true?

13 A. Yes.

14 MR. COX: Object to the form and
15 mischaracterizes the document.

16 BY MR. SWANSON:

17 Q. Would you agree -- does Johnson & Johnson
18 agree that for a records retention policy to be
19 effective it has to be complied with?

20 True?

21 MR. COX: Object to the form.

22 THE WITNESS: The -- the company creates
23 policies that are -- that express its -- its
24 intentions and procedures under them that enable
25 employees to comply with those policies.

1 BY MR. SWANSON:

2 Q. Sure. Of course. That's what a policy
3 is. But if you've got a policy and you don't
4 comply with it, then it's not an effective policy;
5 correct?

6 A. Except -- yes, I would agree except to the
7 extent that policies don't necessarily in
8 themselves contain a mechanism to comply. You
9 need procedures to comply.

10 So the policy expresses what the
11 procedures should accomplish.

12 Q. Right. So there have to be procedures to
13 accomplish it, there has to be understanding by
14 employees; correct?

15 A. Yes.

16 Q. And that includes training of employees;
17 correct?

18 A. Yes.

19 Q. And whatever policies and mechanisms there
20 are need to be -- the employees who have records
21 or information need to know about those; correct?

22 A. Yes.

23 Q. So, for example, if there's a legal hold
24 and people don't know about a legal hold that --
25 that's theoretically applicable to documents or

1 information they have, then it's -- it has no
2 effect; correct?

3 MR. COX: Object to the form.

4 THE WITNESS: No effect in and of itself.
5 I mean, certainly there are other reasons why
6 people retain information such as retention
7 schedules.

8 BY MR. SWANSON:

9 Q. But if there wasn't a retention schedule,
10 they wouldn't be -- I mean, if there was -- if it
11 wasn't under a retention policy, then it wouldn't
12 be retained. Then -- and they didn't know about a
13 legal hold, then there would be no reason for them
14 to preserve that document; correct?

15 MR. COX: Object to the form.

16 THE WITNESS: There would be no business
17 reason for them to preserve them.

18 BY MR. SWANSON:

19 Q. They might preserve it sort of by accident
20 or by the fact of just not -- not getting around
21 to it, something like that. But otherwise they
22 would dispose of it; true?

23 MR. COX: Object to the form.

24 THE WITNESS: From the standpoint of the
25 policy documents, I would agree.

1 BY MR. SWANSON:

2 Q. You're aware that the plaintiffs demanded
3 all retention schedules from Johnson & Johnson,
4 correct, in this case?

5 A. I'm generally aware of that.

6 Q. And you're aware that it has been
7 represented to the plaintiffs in this case that
8 all of those policies have been produced; correct?

9 MR. COX: Object to the form.

10 THE WITNESS: I'm aware that those
11 policies that could be located have been provided
12 have been produced.

13 BY MR. SWANSON:

14 Q. And the oldest policy that you've seen is
15 1997; correct?

16 A. That is the oldest retention schedule I've
17 seen at the Consumer level.

18 Q. And what do you mean "at the Consumer
19 level"?

20 A. Well, the Johnson & Johnson Consumer, Inc.
21 or Consumer Products are, as it's been known over
22 the different names over the years, has, since the
23 early '90s, created its own retention schedules.

24 MR. SWANSON: Can I have that answer read
25 back, please.

1 (Record read by the court reporter.)

2 BY MR. SWANSON:

3 Q. Okay. So Johnson & Johnson -- you're
4 talking about the Johnson & Johnson Consumer
5 company that was the -- the subsidiary of Johnson
6 & Johnson that was specifically tasked with
7 marketing and distributing and manufacturing
8 Johnson's Baby Powder and Shower to Shower;
9 correct?

10 A. Yes.

11 Q. And there's a history of companies that
12 goes back to Johnson & Johnson Consumer Companies,
13 Inc.; Johnson & Johnson Consumer Products, Inc.;
14 Johnson's -- different-named companies; correct?

15 A. Yes.

16 Q. And you're telling me that those companies
17 had retention policies going back to the early
18 '90s?

19 MR. COX: Object to the form.

20 THE WITNESS: I'm -- in my fact-finding, I
21 interviewed Rosina Bruno-Sheerin who was one of
22 the company's records managers. She and -- and
23 others, too, perhaps Michelle Anderson, others
24 that I spoke to, indicated that there were --
25 there was at least a schedule created in the early

1 '90s that was based on the McNeil Company's
2 schedule.

3 BY MR. SWANSON:

4 Q. And where is that policy?

5 A. I have requested and through counsel have
6 requested what policies and schedules could be
7 provided by the consumer companies. What's been
8 provided thus far is what they were able to come
9 up with. I understand that they continue to
10 research the availability of additional materials.

11 Q. Okay. And you realize that -- so I'll
12 just cut to the chase here. You've seen the 1997
13 records retention schedule; correct?

14 A. Yes.

15 Q. So in 1997 in the records retention
16 schedule, Johnson & Johnson has a retention
17 schedule or retention period for records retention
18 schedules; correct?

19 MR. COX: Object to the form.

20 Go ahead.

21 THE WITNESS: I'm sorry. When you say
22 "Johnson & Johnson," which entity are you
23 referring to?

24 BY MR. SWANSON:

25 Q. It says "Johnson & Johnson Consumer

1 Products Companies." It was the -- you had
2 mentioned that the earliest one that you've seen
3 is 1997; correct?

4 A. Yes.

5 Q. And I have that here, and you have that.
6 And, in fact, that has been marked as Exhibit 13.
7 If you want to go ahead and pull that out.

8 A. Yes, I have it.

9 Q. If you look at page, I believe it's 251,
10 of Exhibit 13, which is the 1997 retention
11 schedule for Johnson & Johnson Consumer Products
12 Company.

13 And what does it say there about how long
14 records retention schedules documentations are
15 supposed to be maintained by the company?

16 A. Life of corporation.

17 Q. Okay. So if any records retention
18 schedules that Johnson & Johnson had were
19 destroyed or were lost or not preserved, disposed
20 of, whatever you want to call it, they weren't
21 following their own records retention policy, were
22 they?

23 MR. COX: Object to the form.

24 THE WITNESS: I mean, in response to that
25 hypothetical, I would agree.

1 BY MR. SWANSON:

2 Q. And Johnson & Johnson's Consumer Products
3 Companies, those are the folks who are making and
4 marketing and distributing the baby powder;
5 correct?

6 A. That's my understanding.

7 Q. So let's go to the notes. If you look
8 at -- if you kind of peel under the rest of those
9 exhibits, you find -- you can put that '97
10 schedule aside for now. I don't want to bog you
11 down with too many things, but if you look at
12 Exhibit 18, those are your notes. And those are
13 the notes that you created, I believe, in
14 preparation for your deposition in June in the
15 Hayes case; is that correct?

16 A. Yes.

17 Q. And we attached those as Exhibit 18. We
18 talked about this at some length.

19 MR. SWANSON: What I'd like to do is give
20 you another copy of those that we can work off of
21 more easily.

22 (Whereupon, Plaintiff's Exhibit 26 was
23 marked for identification.)

24 MR. SWANSON: I'm handing you Exhibit 26
25 to your deposition. And let me explain what that

1 is.

2 And I think I have a copy for you, Chris.

3 MR. COX: Thank you.

4 BY MR. SWANSON:

5 Q. Do you have Exhibit 26 in front of you?

6 A. Yes.

7 Q. And those are your notes that you prepared
8 in preparation for your deposition in the Hayes
9 case; correct?

10 A. Appear to be, yes.

11 Q. And what I've -- you see what I've done
12 here, I've had those paginated at the top right?

13 A. I see.

14 Q. And the reason is, is because I'm going to
15 have a number of questions about these and I
16 wanted to make it so that we could easily refer
17 each other to where we're -- where we're looking,
18 where your answer -- where it's related to my
19 question.

20 And so that's what I've done here.

21 And just, again, to summarize, you
22 prepared these notes from the conversations that
23 you had had with various Johnson & Johnson
24 business employees and also the people who are --
25 who deal with records retention, searches,

1 maintenance of document platforms, and that sort
2 of stuff; right?

3 A. I would agree except that I would say, and
4 I didn't really prepare them from the
5 conversations. They are the real-time record of
6 what people were saying as I was asking. So I was
7 typing as I was talking.

8 Q. So these are -- these are the best
9 verbatim records that you could take at the time?

10 A. Yes.

11 Q. And you mentioned a Rosina Bruno-Sheerin,
12 I think.

13 A. Yes.

14 Q. Making a reference to earlier retention
15 schedules prior to 1997; is that correct?

16 A. Yes.

17 Q. And can you direct that -- direct me to
18 that in your interview?

19 A. Yeah. First, I'm going to look in
20 Exhibit 19, which is just the index of the notes,
21 and I see that she's about halfway through. So
22 I'm going to...

23 So that's page 36.

24 Q. Okay. And where in your notes is the
25 reference to retention schedules of the Johnson &

1 Johnson Consumer Companies going back to the early
2 '90s?

3 A. On the first page, she noted that she came
4 to the company, to the -- what she calls the
5 "office side" in 1990, and she noted that she
6 created a retention schedule and aligned boxes and
7 used the McNeil versions as her basis.

8 Excuse me.

9 Q. Do you know what -- do you know what the
10 retention schedule entailed in terms of what
11 departments or companies it was for?

12 A. Simply what was put there, that there were
13 a few -- that there were not a large number of
14 boxes at that time. She references some specific
15 material such as batch records and R&D. It's not
16 clear from her notes what -- you know, what every
17 records type would have been at that point,
18 although one can conclude that the McNeil
19 schedules were already in existence at that point
20 and would have -- would have been -- had similar
21 content.

22 MR. SWANSON: Move to strike based on
23 speculation. It's also nonresponsive.

24 BY MR. SWANSON:

25 Q. So the retention schedule that you

1 created, was that only as to those boxes, those
2 few boxes that are referenced there? And if you
3 don't know, just tell me you don't know.

4 A. Yeah, like I said, my recollection is that
5 she's -- she told me and I wrote it down that she
6 based the schedule on the McNeil schedule. So
7 I -- by that, I infer or deduce that it was not
8 just covering the boxes in front of her but was
9 a -- meant to be a representative schedule.

10 Q. For what?

11 A. For the Fort Washington operation.

12 Q. And what was the Fort Washington operation
13 doing at that time? What specifically was their
14 involvement in baby powder?

15 MR. COX: Object to the form.

16 THE WITNESS: I'm not an expert on the
17 precise locations. I don't know that they -- that
18 side of the business was involved. I believe
19 there was -- there was more activity on the
20 Skillman side related to the baby powder but
21 that eventually the two sides came together.

22 BY MR. SWANSON:

23 Q. So you don't know whether these --
24 whatever retention schedule there was that she
25 created -- first of all, we don't have it. You

1 don't know the particulars of that, although she
2 said it was based on McNeil.

3 Have you reviewed the Neil Fort Washington
4 schedule?

5 A. No.

6 Q. So you don't -- as the representative for
7 Johnson & Johnson, you don't know what was in that
8 retention schedule, do you?

9 A. Correct.

10 Q. You don't know what the periods of
11 retention were for; correct?

12 A. Correct.

13 Q. And you don't know whether or not that
14 applied specifically what it applied to other than
15 something at Fort Washington; correct?

16 A. Correct.

17 Q. So if we wanted more information about
18 this, we would have to speak to Rosina
19 Bruno-Sheerin; correct?

20 MR. COX: Object to form.

21 THE WITNESS: Well, I've done my best to
22 summarize her recollection. Then there's other
23 references to those schedules in my notes. She is
24 a person with knowledge.

25 BY MR. SWANSON:

1 Q. What other references to early '90s
2 schedules are there in your notes?

3 Well, first of all, you said she's a
4 person of knowledge; she has more knowledge with
5 you about these issues of course; correct?

6 MR. COX: Object to form.

7 THE WITNESS: In terms of the specific
8 question about when -- when and how the schedules
9 were creating, she has that knowledge.

10 BY MR. SWANSON:

11 Q. Or even what the purview of those
12 schedules was in terms of that to which they were
13 applicable; correct?

14 A. I would agree.

15 Q. And where else in your notes?

16 A. I'm just running through the various
17 records notes.

18 Yeah. There's one reference in Cindy
19 Aden's notes about talking to Rosina regarding
20 historical schedules. I -- I'm continuing to look
21 for other -- other references.

22 Q. Okay. Let's -- we've got a lot to cover,
23 so if you see something later you can mention it
24 and we'll go over it, if there are other
25 references from other people, who had firsthand

1 knowledge of those schedules.

2 MR. COX: Mark, if you're going to move on
3 to a new topic, could we take a short break?
4 We've been going for about an hour.

5 MR. SWANSON: Let me ask one -- one
6 follow-up there.

7 BY MR. SWANSON:

8 Q. If you look at page 31 of your notes.
9 This is Exhibit 26 again.

10 A. "31" you said?

11 Q. Yeah. There was -- I'm trying to find it.
12 Looks like this ERMS was launched in 2014;
13 correct?

14 A. Yes.

15 Q. And you see where it says, "Now have
16 integrated retention schedule management in ERMS."

17 A. Yes.

18 Q. Was the -- was the retention schedule of
19 management not integrated prior to 2014 at
20 Johnson & Johnson?

21 MR. COX: Object to the form.

22 THE WITNESS: Well, I took that to mean
23 that the schedule had to be applied to TRIM to
24 GIFTS to Versatile independently as opposed to
25 being able to practice retention from a single

1 vantage point.

2 MR. SWANSON: Chris, did you say you want
3 a break?

4 MR. COX: Yeah. I figured you were going
5 to move on to a different topic.

6 MR. SWANSON: Well, yeah. I mean, there's
7 a lot to cover, so if you -- if he needs a break,
8 you need a break, that's fine.

9 MR. COX: Okay. Let's take a short break.

10 MR. SWANSON: Let's try to keep our
11 breaks --

12 THE VIDEOGRAPHER: This marks the end of
13 Video Media Number 1 in the deposition of James
14 Mittenthal.

15 Off the record at 10:13.

16 (Recess taken.)

17 THE VIDEOGRAPHER: On the record at
18 10:34 a.m.

19 This marks the start of Media Number 2 in
20 the deposition of James Mittenthal.

21 Counsel, you may continue.

22 BY MR. SWANSON:

23 Q. When you spoke to Rosina Bruno-Sheerin
24 about earlier schedules that have not been
25 produced and Johnson & Johnson hasn't located, did

1 she tell you that those were the first retention
2 schedules produced -- created by Johnson &
3 Johnson?

4 MR. COX: Object to form.

5 THE WITNESS: She indicated that there
6 were -- and I'm going to refer to her exact words
7 if that's okay.

8 BY MR. SWANSON:

9 Q. That's fine.

10 A. Or what I -- what I wrote from her words.

11 So this is on page 36, a few lines down.

12 "Created retention schedule and aligned boxes."

13 I took that to mean that she created the
14 retention schedule where none had existed for that
15 department or facility.

16 Q. But anything more than that, you don't
17 know as to whether or not those were the first
18 retention schedules applicable to her department
19 or something broader than her department; correct?

20 A. Correct.

21 Q. Are the current Johnson & Johnson record
22 retention schedules for the consumer companies and
23 the global retention -- well, let's start with the
24 consumer companies.

25 Are they mandatory?

1 MR. COX: Object to the form.

2 THE WITNESS: They describe periods by
3 which information in the various categories must
4 be held -- held for. So, to the extent that
5 they -- that a piece of information is viewed to
6 be subject to a retention schedule, then it is
7 required that that information be held at least as
8 long as that retention schedule prescribes.

9 BY MR. SWANSON:

10 Q. So that's a "shall" as opposed to a "may";
11 correct? Something that's mandatory that
12 employees are required to follow; is that true?

13 A. I would agree.

14 Q. And since what year have the retention
15 schedules for Johnson & Johnson been mandatory?

16 A. Well, I don't know. Johnson & Johnson
17 is -- is -- which Johnson & Johnson entity would
18 that refer to?

19 Q. Let's talk about the consumer companies
20 who are marketing and manufacturing, selling
21 Johnson & Johnson talc -- cosmetic talc products.

22 A. Okay. I would refer to my notes with
23 Darren Harris, which is going to be -- I'm sorry.
24 I'm looking at the wrong copy. This is the
25 paginated one. Page 27.

1 So in that note he indicated that ten
2 years ago in approximately 2009, the Skillman and
3 Fort Washington materials were -- were
4 consolidated.

5 Q. Where is that note on the page?

6 A. About ten lines down.

7 Q. Okay. It says, "Ten years ago Skillman
8 went under Fort Washington team, had different
9 SOPs for each."

10 What does that mean?

11 A. Standard operating procedures.

12 Q. As to what? Document retention?

13 A. How to effectuate document retention, yes.

14 Q. How does that answer my question about
15 whether or not the policies were mandatory? When
16 they became mandatory.

17 A. Yes. I -- I didn't see the precise answer
18 to that question in -- in his comments. I -- I
19 have a retention schedule from 1997 that applies
20 to Johnson & Johnson Consumer Products Companies.
21 That's the earliest schedule I'm aware of. There
22 may be mandatory schedules prior to that time.

23 Q. Now, did that 1997 schedule, which is
24 marked as Exhibit 13 to your deposition, that
25 doesn't say on there that it's mandatory, does it?

1 In fact, it calls it a "guideline." Doesn't it
2 say "guideline" right in the title, "Johnson &
3 Johnson Consumer Products Companies Guideline
4 Records Retention Schedule"? True?

5 A. Yes, I see that.

6 Q. But the current ones don't say
7 "guideline," do they?

8 A. I don't see that on the current ones.

9 Q. And when you were speaking to Rosina
10 Bruno-Sheerin, she told you that the prior global
11 records retention schedules were not mandatory but
12 were only a suggestion.

13 Do you recall that?

14 A. I'd like to reference...

15 Q. It's page 37.

16 A. Can you reference me to that point on
17 page 37?

18 Q. Yes. It's about -- a little more than
19 halfway down, it says, "in 2006 tried to make
20 records, titles more uniform in standardized
21 retention periods. Old corporate program called
22 'global records retention scheduled' was only a
23 suggestion."

24 Do you see that?

25 A. Yes, I do.

1 Q. So until 2006 or sometime around there --
2 well, let me ask you, because she's referring to a
3 2006 date and trying to standardize the retention
4 schedules. When she says this global records
5 retention schedule is only a suggestion, until
6 what year after 2006 was it still only a
7 suggestion?

8 MR. COX: Object to the form.

9 THE WITNESS: Well, the GRRS was not a
10 consumer products schedule. That was a corporate
11 schedule. That is a schedule that the Johnson &
12 Johnson corporate had devised to be available to
13 the franchise companies if they wished to use it.

14 In 2015, the GRRS was replaced with the
15 ERS, the enterprise retention schedule. At that
16 point adoption or harmonization with the ERS
17 became mandatory.

18 BY MR. SWANSON:

19 Q. So until 2015, if a particular Johnson &
20 Johnson operating company or department didn't
21 have its own retention schedule, then it could
22 comply with corporate's global record retention
23 schedule, which was only a suggestion; correct?

24 MR. COX: Object to the form.

25 THE WITNESS: My understanding is that it

1 was available to be used by the -- the entities if
2 they wished.

3 BY MR. SWANSON:

4 Q. And that would include -- would that
5 include overseas entities? And if you don't know,
6 just say you don't know.

7 A. Yeah. I don't know.

8 Q. Okay. And, again, is Rosina Bruno-Sheerin
9 the person we should be talking to about that?

10 MR. COX: Object to form.

11 THE WITNESS: About which topic?

12 BY MR. SWANSON:

13 Q. About whether or not the global records
14 retention schedules were applicable to overseas
15 operating divisions or subsidiaries of Johnson &
16 Johnson corporate.

17 A. Well, inasmuch as GRRS is a corporate
18 vehicle or was a corporate vehicle, I would think
19 a person in the corporate records program would be
20 the best person to elicit that from.

21 Q. Who would that be?

22 A. That could be Cindy Aden. That could be
23 Karen Skellington.

24 Q. Did you speak to them about that issue,
25 the applicability of the global records retention

1 schedule to Johnson & Johnson International or
2 Johnson & Johnson Hong Kong or Johnson & Johnson
3 Philippines, for example?

4 A. I don't recall speaking about that.

5 Q. So -- but until 2015, this global records
6 retention schedule was just a suggestion because
7 it existed until 2015 when it was replaced by the
8 ER -- the enterprise retention schedule; true?

9 A. Yes.

10 Q. So that just means by definition, then, if
11 an operating division or unit or department of
12 Johnson & Johnson did not have its own retention
13 schedule at the time, they either wouldn't have a
14 retention schedule or they could use this global
15 records retention schedule; true?

16 MR. COX: Object to the form.

17 THE WITNESS: I'm not familiar if both of
18 those alternatives were available. I know that
19 the schedule existed prior to 2015. I don't know
20 whether it was mandatory or not in the absence of
21 another schedule.

22 BY MR. SWANSON:

23 Q. Well, Rosina Bruno-Sheerin said it was
24 only a suggestion; true?

25 MR. COX: Object to the form.

1 BY MR. SWANSON:

2 Q. Old corporate program, that's referring to
3 GRRS, was only a suggestion. That's what she
4 meant; correct?

5 MR. COX: Object to the form.

6 THE WITNESS: In the -- in the 2006 time
7 frame I believe she was referring. Yes. I -- she
8 was referring to the 2006 period.

9 BY MR. SWANSON:

10 Q. How -- why do you say that that refers to
11 2006 period? The old corporate program you just
12 told me was GRRS and it wasn't replaced until 2015
13 by ERS. So the old program is GRRS; true?

14 A. Yes.

15 MR. COX: Object to the form.

16 BY MR. SWANSON:

17 Q. Okay. So are you telling me that, even
18 though she said the old corporate program called
19 GRRS was only a suggestion, are you telling me
20 that GRRS went from only being a suggestion to
21 being mandatory at some point?

22 A. No.

23 Q. Okay. So it was only a suggestion until
24 it was replaced by ERS; true?

25 A. That's my -- my understanding. But I

1 don't know the particulars. In other words, was
2 it a suggestion if the operating company didn't
3 have a schedule in place or was it a suggestion if
4 the operating company had a schedule in place they
5 could opt to use either. I don't know the
6 particulars between those two scenarios.

7 Q. Okay. But, to the extent it was being
8 used, it was, when it existed, only a suggestion;
9 true?

10 MR. COX: Object to the form.

11 THE WITNESS: Yes.

12 BY MR. SWANSON:

13 Q. And -- which means if a company or
14 division or department did not at the time have an
15 operative record retention schedule, then it could
16 have the option of using the GRRS; true?

17 A. That is my understanding.

18 Q. But if they had their own records
19 retention schedule, then they may or may not use
20 the GRRS; true? Because it wasn't mandatory.

21 A. There are other in-between possibilities.

22 Q. What's the in-between possibility?

23 A. They take the GRS, use it as a model, and
24 then alter it to suit their own requirements.

25 Q. You don't have any specific information

1 about any division or subsidiary doing that with
2 the GRRS, do you?

3 A. Correct.

4 Q. So I think we discussed this, but Johnson
5 & Johnson agrees that in order to follow its own
6 retention schedules -- well, its own document and
7 information policies and programs, people need to
8 be trained; correct?

9 A. Yes.

10 Q. And you learned from your interviews that
11 until 2008, a large number of people at Johnson &
12 Johnson were still untrained in records retention
13 policy; true?

14 MR. COX: Object to the form.

15 THE WITNESS: Can we reference a citation
16 for that somewhere in my notes?

17 BY MR. SWANSON:

18 Q. Yes. It's page 29 of your notes.

19 Okay. Let's be specific here. This is an
20 interview of Joan -- Joann Dodd?

21 A. Yes.

22 Q. Senior analyst, records management; true?

23 A. Yes.

24 Q. And she started in 2007-2008 according to
25 your notes; is that right?

1 A. In the records program, yes.

2 Q. And so she's in the records program.

3 Records program for which companies?

4 A. Consumer, Inc.

5 Q. Johnson & Johnson Consumer, Inc. And,
6 again, that's the company that's marketing and
7 manufacturing the cosmetic talc products including
8 baby powder and Shower to Shower; correct?

9 A. Yes.

10 Q. And do you see here where you wrote, "Back
11 in 2008, 56 percent participation in recurring
12 departmental training. Now 98. But would not" --
13 "but would perform departmental audits."

14 So in 2008, only 56 percent of the
15 employees at Johnson & Johnson Consumer, Inc.,
16 only 56 were trained in the records policies; is
17 that right?

18 A. No.

19 Q. What does that mean?

20 A. Recurring training, meaning that the --
21 you come to the company as an employee, you
22 receive records training. You were then required
23 to get recurring training once or twice a year as
24 you go forward in your -- in your job.

25 Q. Does it say anything in your notes

1 about -- well, before I get there, what's the
2 purpose of recurring training?

3 A. To reinforce the objectives and the
4 procedures for record retention, to inform
5 employees of any changes in those procedures.

6 Q. Okay. And that's done currently at
7 Johnson & Johnson Consumer, Inc. How often is
8 that done, these reoccurring trainings?

9 A. A couple times a year.

10 Q. And so there's 44 percent of the people as
11 of 2008 were not getting recurring training; true?

12 A. In 2008, I -- I would agree that that was
13 her point.

14 Q. And what was the participate -- when
15 did -- do you have any information as of 2008
16 whether or not any initial training was done?

17 A. I understand initial training was required
18 for people to get started in their job. I
19 understand that was mandatory. I could go back to
20 understand if that was a hundred percent or some
21 lesser number. I don't have that number at hand.

22 Q. Where did you get the understanding that
23 there was as of 2008 a mandatory, or initial
24 training?

25 A. I have -- it may be in my notes; it may

1 not. Over the years I have spoken to Johnson &
2 Johnson employees and understand that there is an
3 onboarding process that includes records training.

4 Q. And so that initial training was something
5 that would be done -- well, first of all, who --
6 do you remember who that was who told you that?
7 And do you know if it was as to Johnson & Johnson
8 Consumer, Inc. or the Johnson & Johnson Consumer
9 Companies?

10 A. I would have to look through my notes. I
11 don't recall -- I know there have been references
12 to it. I don't recall the context for whom I
13 heard it from, and, to the extent that it's in my
14 notes, I can check.

15 Q. And when -- what is -- I don't want you to
16 guess, but do you have any information about when,
17 what year Johnson & Johnson instituted records
18 retention and records policy training for new
19 employees?

20 A. With your permission, I'm just going to
21 look through a couple of my notes and see if I
22 can't get some references to that.

23 Q. Sure. Go ahead.

24 A. Well, the first one I just found off the
25 bat was that Ms. Dodd just a few lines above from

1 when we were talking about indicated that training
2 must be accomplished in 30 days for a new
3 employee.

4 Q. Where does it say that?

5 A. Your page 29, right after that section
6 that says the five SOPs.

7 Q. Oh, "need training within 30 days"?

8 So that's referring to records management
9 training and records retention schedule training?

10 A. Further down it indicates, "Training
11 included legal hold, departing associates,
12 retention procedures, roles."

13 Q. Okay, but again, I believe the question
14 was, do you have any information of when that
15 started, training within 30 days of a new
16 employee?

17 A. I do not.

18 Q. And so you don't know even if that was
19 happening in 2005; true?

20 A. I don't have specific information about
21 that.

22 Q. And you don't know whether or not that
23 was being -- people were being trained at all as
24 to that 1997 records retention schedule, do you?

25 A. I do not.

1 Q. Now, if 44 percent of the folks aren't
2 going to reoccurring training as to 2008 and
3 somebody started a long time ago, they may have
4 never had the training; true?

5 MR. COX: Object to the form.

6 THE WITNESS: It's possible. I -- I think
7 Ms. Dodd made the point afterwards that there were
8 departmental audits that were conducted outside
9 the training to verify participation and
10 knowledge.

11 BY MR. SWANSON:

12 Q. Do you know the particulars of those
13 audits?

14 A. No.

15 Q. So, again, Joann Dodd would be the person
16 to talk -- for us to talk to about that; correct?

17 MR. COX: Object to the form.

18 THE WITNESS: With respect to that topic,
19 yes.

20 BY MR. SWANSON:

21 Q. And would you agree with me that, even if
22 training had started at the time of the initial
23 record retention schedules or going back to 1997,
24 that if somebody started right around then and
25 didn't have retraining, whatever knowledge they

1 had about the records retention would be variable
2 and it could be pretty stale, couldn't it?

3 MR. COX: Object to the form.

4 THE WITNESS: It's -- it's possible. Her
5 point, to follow on to that statistic, was that
6 audits would detect a nonparticipation.

7 BY MR. SWANSON:

8 Q. Where's the reference to audits again?

9 A. Just under the 98 percent.

10 Q. Well, you said something about detecting.
11 It just says here "but would perform departmental
12 audits."

13 Other than what you wrote there, those
14 five words, "but would perform departmental
15 audits," do you have any information about those
16 audits?

17 A. Not about the audits themselves.

18 Q. And were there any audits prior to 2008?

19 A. She didn't indicate when the audits
20 started.

21 Q. So there may not have been; true?

22 A. I can't speak one way or the other.

23 Q. I want to ask you about something
24 called -- referred to in your notes as "cleanout."

25 Are you familiar with that?

1 A. Yes.

2 Q. Okay. And what was -- what does cleanout
3 in your notes in the several people you discuss
4 cleanout about, what does that refer to?

5 A. Cleanout was a reference to a retired
6 WWRIM standard entitled "Records Cleanout
7 Standard."

8 Q. And the cleanout was a -- it was called
9 the "cleanout event"; correct?

10 A. Yes.

11 Q. And the cleanout event was something that
12 happened annually; correct?

13 A. Generally.

14 Q. And it was mandatory; true?

15 A. It was a participatory event, the -- like
16 an inventory day in a business.

17 Q. So a manager of a department would oversee
18 the cleanout event, correct, or some manager in
19 the department?

20 A. Managers and records coordinators and
21 records officers.

22 Q. And they did that to ensure that everybody
23 was complying with the policy in doing the
24 cleanout event annually; true?

25 A. Yes. Compliance was also the individual

1 employee's responsibility, but in terms of
2 disposal of information, they were also there to
3 sign off on disposal of information.

4 Q. And generally speaking, the cleanout event
5 was essentially if something is not currently
6 being held because of a retention schedule or a
7 legal hold, it should -- it has to be destroyed;
8 correct?

9 MR. COX: Object to the form.

10 THE WITNESS: The -- the purpose of the
11 cleanout day was to give opportunity to the
12 employees to go through their materials, identify
13 those that were candidates for disposition, and
14 basically get themselves organized.

15 BY MR. SWANSON:

16 Q. But when you say "disposition," what
17 you're really talking about is if the documents
18 were not subject to a hold or to a retention
19 period still, those documents, when you say
20 "disposition," you mean they were to be destroyed;
21 correct?

22 A. That's right.

23 MR. COX: Object to form.

24 BY MR. SWANSON:

25 Q. They can't keep them around. You

1 destroyed those records; true?

2 MR. COX: Object to the form.

3 THE WITNESS: That's right.

4 BY MR. SWANSON:

5 Q. Now, I just got some of these today, these
6 WW worldwide records and information management
7 policies. So I apologize if I fumble around on
8 them a little bit, but I'm going to -- I want to
9 go through them a little bit with you.

10 You know, we probably should just for
11 your -- let's take that stack over there and put
12 it on top over there, I think, will help you out.
13 And then see what you've got underneath. Probably
14 keep the notes around. You're going to need
15 those.

16 Okay. And I think we marked, and
17 hopefully I can locate it, the Version 1.0 is
18 marked as Exhibit Number 25, and I believe you
19 have that.

20 I can show it to you there so you can see
21 what it looks like.

22 A. 25. Here it is.

23 Q. You got 25. Okay.

24 Do you have that in front of you?

25 A. Yes, I do.

1 Q. And so this is the worldwide's record
2 information management policy Version 1.0 dated
3 July 2009; true?

4 A. Yes.

5 Q. And the Version 1.1, which was also
6 produced and we will mark that, too, and the rest
7 of the versions that were provided have quite a
8 few pages, I don't know, 30, 40 pages, something
9 like that. This one looks to be about four or
10 five pages.

11 Do you know where the rest of this
12 document is?

13 MR. COX: Object to the form.

14 THE WITNESS: Did you say 1.1?

15 BY MR. SWANSON:

16 Q. No. 1.0 is what we're looking at.

17 A. Okay.

18 Q. I just referenced the other ones because
19 they're --

20 I need to get some water. I'll be back in
21 two seconds. Pardon me.

22 Okay. So you have Exhibit 25 in front of
23 you?

24 A. Yes.

25 Q. And let's go ahead and --

1 Do you have -- do you have Policy 1.1?

2 A. I don't believe I do.

3 MR. SWANSON: Let's see. Let's mark this
4 one for you.

5 (Whereupon, Plaintiff's Exhibit 27 was
6 marked for identification.)

7 BY MR. SWANSON:

8 Q. So Johnson & Johnson worldwide records and
9 information management policy Version 1.1,
10 September 30, 2009, that is marked as Exhibit 27.

11 Do you have that one in front of you?

12 A. I do.

13 Q. Okay. Let me just go ahead and give you
14 the rest of them, too, so you've got them in front
15 of you.

16 MR. SWANSON: And Version 2 of the WWRIM
17 policy dated 2011 is Exhibit 28.

18 (Whereupon, Plaintiff's Exhibit 28 was
19 marked for identification.)

20 (Whereupon, Plaintiff's Exhibit 29 was
21 marked for identification.)

22 BY MR. SWANSON:

23 Q. And Version 3.0 of the WWRIM policy dated
24 April 1, 2014, is Exhibit 29.

25 Do you have that in front of you?

1 A. Yes.

2 Q. And we had already marked Versions 4 and
3 5.

4 Okay. So going back to Exhibit 25,
5 Version Number 1.0, from July 31, 2009, where is
6 the rest of the policy in terms of these various
7 what you call "RIMS"?

8 MR. COX: Object to the form.

9 THE WITNESS: Assuming this is complete, I
10 don't see the standards in Version 1.0.

11 BY MR. SWANSON:

12 Q. So as of July -- but you said assuming
13 this is complete.

14 Do you know if this is complete?

15 A. I have not seen this Version 1.0 before
16 today.

17 Q. Okay. Do you see on all of these WWRIM
18 policies that were just produced today to us this
19 morning, Versions 1.0 through Version 3, why are
20 there no Bates numbers on those documents?

21 A. I -- I can't speak to that. I -- that
22 would be a lawyer question.

23 Q. Now, the record retention schedule that
24 was produced, the first one that you have, goes
25 back to 1997.

1 Was there a records and information
2 management policy or policies that went back to
3 1997?

4 MR. COX: Object to the form.

5 THE WITNESS: My understanding is that
6 there were policies that accompanied the
7 schedules.

8 BY MR. SWANSON:

9 Q. Okay. And I did not see those policies
10 produced with the records retention schedules that
11 were produced to us.

12 Do you have those?

13 A. No.

14 Q. Do you know where those are?

15 A. My understanding is that the records
16 department is continuing to research those
17 materials.

18 Q. Is it also fair to say that those -- those
19 record retention policies prior to 2009 would have
20 also been documents that should have been kept for
21 the -- left for the corporation?

22 A. I'd have to go back to the schedule and
23 see how the schedule is defined.

24 Do we have a reference to that?

25 Q. Is that page 251 of Exhibit 13, I believe?

1 That's the section on records management.

2 You see records management training
3 information, records destruction authorization,
4 records. Oh, sorry -- yeah, 251, records
5 retention documentation.

6 And if you don't know, that's fine. Oh,
7 if you see records -- if you look at -- let me
8 just ask you differently: Do you know what the
9 retention period was on records and information
10 management policy prior to --

11 A. Well, I was looking.

12 Q. -- 2009?

13 A. I was looking and I found on page 248 of
14 the '97 schedule an indication that policy
15 documents, which are defined as written
16 descriptives of the operating principles, are
17 directives pertaining to the organization, are to
18 be held S plus 8.

19 Q. S plus 8. So that would be 2009 to 2017;
20 true?

21 A. So, in other words, the year that they
22 were superseded plus 8.

23 Q. Oh, okay. I see. So presumably, then,
24 you would expect that there should be some
25 policies still, although we'd have to look at

1 subsequent record retention schedule to see if
2 that stayed consistent; true?

3 A. I'd have to do the arithmetic, frankly.

4 Q. All right. Okay. Let me ask you about --
5 I've got some questions on Number -- Version 1.1,
6 that's Exhibit 27. Okay.

7 If you go to RIMS Number 3 in that
8 document, which is about, looks like about eight
9 pages in?

10 A. Records cleanout events standard.

11 Q. You got that right?

12 A. Okay.

13 Q. And this is referring to the cleanout
14 event, the annual cleanout event that we were
15 talking about earlier; right?

16 A. Yes.

17 Q. And this indicates that this -- this would
18 have been in effect September 30, 2009; true?

19 A. Yes.

20 Q. Were there cleanout events prior to
21 September 2009?

22 A. I have general knowledge -- and it may not
23 be reflected in my notes -- I have general
24 knowledge that -- that there were.

25 Q. How far back were there cleanout events

1 prior to 2009?

2 A. I don't have specific answers to that. My
3 understanding is that it was a -- had been in
4 place for a number of years based on the fact that
5 the company was working primarily in paper going
6 back many years and that the cleanout standard and
7 event was organized to organize -- was held to
8 help employees organize paper documents primarily.

9 Q. And do you know -- you don't know
10 specifically how many years that goes back,
11 though; true?

12 A. Correct.

13 Q. And this was -- the policy -- this policy
14 WWRIM is a worldwide policy; correct?

15 A. Yes.

16 Q. So that would affect what's going on in
17 the Philippines, J&J Philippines, J&J Hong Kong;
18 true?

19 A. It -- by implication worldwide, yes, would
20 apply worldwide.

21 Q. Because it says it provides requirements
22 for Johnson & Johnson operating companies; true?

23 A. Yes.

24 Q. It says, "Reference terms" -- under
25 "definitions," it says, "Reference terms used in

1 the standard are found in the worldwide's record
2 and information management program glossary."

3 Had that been provided to us?

4 A. I'm looking at the definitions section at
5 the front of the policy. I don't know if that is
6 the glossary that's being referenced or not.

7 Q. What page is that?

8 A. The first page.

9 Q. That doesn't look like a glossary to me.

10 Does that look like a glossary to you,
11 under "definitions"?

12 A. I don't know.

13 Q. Wouldn't a glossary list the various terms
14 that are used and define each of the terms?

15 A. Yes.

16 Q. Okay. And this definition just is a
17 definition of disposition, standard document hold,
18 records retention schedule, compliance, and
19 standard; true?

20 A. I don't believe it's compliance.

21 Q. Okay. But the rest of those terms that
22 are in -- the six italicized terms are the ones
23 that are defined there; right?

24 A. Yes.

25 Q. Now, this says, "Management program

1 glossary," the reference that I was referring to
2 under "cleanout event standard." And I don't see
3 anything here that says -- do you see anything in
4 this document that's been provided to us called
5 "Worldwide records and information management
6 program glossary"?

7 A. What I'm going to do is look at a later
8 version and see if that language is still...

9 Q. Okay. But please just answer my question
10 first.

11 A. I do not.

12 Q. Do you see something called a glossary in
13 this document, Exhibit 27?

14 A. I do not.

15 Q. Okay. So you didn't -- you didn't find a
16 glossary, did you?

17 A. Correct.

18 MR. SWANSON: Counsel, can you please
19 provide the glossary to us that's being referred
20 to there?

21 MR. COX: Take the request under
22 advisement.

23 BY MR. SWANSON:

24 Q. Going back to Exhibit 27. You got that in
25 front of you; right? We're at RIMS 3, page 1?

1 A. Yes.

2 Q. Okay. If you look at -- and, again,
3 "cleanout" in this context means disposition,
4 which means destruction; true?

5 MR. COX: Object to the form.

6 THE WITNESS: It may result in that. It
7 may just result in materials being better
8 organized.

9 BY MR. SWANSON:

10 Q. Where does it say that, "organized"?

11 A. Well, that is what I understand the
12 purpose of the day is, is to allow employees a
13 chance to look at their materials, determine what
14 needs to be better aligned with the records
15 schedule, dispositions, organized. It is an
16 organizational day which may result in the
17 materials being earmarked for disposition.

18 Q. Now, you said before and I don't want to
19 have to redo all this, but on cleanout day, if
20 it's not under retention pursuant to the schedule
21 and it's not under a legal hold, it gets
22 destroyed; right?

23 MR. COX: Object to the form.

24 THE WITNESS: Generally I would agree.

25 BY MR. SWANSON:

1 Q. Okay. Is there some specific instance
2 you're aware of where you don't agree with that?

3 A. No. But I think -- I think we're talking
4 about the same thing. The purpose of the day, the
5 day itself, is an organizational day that then
6 results in the ability to clean out certain
7 materials that are candidates for destruction.

8 Q. And do you see under 4.2, under "minimum,"
9 these are minimum implementation standards; true?

10 A. I see that, yes.

11 Q. And under 4.2, it says, "The operating
12 company shall conduct a cleanout event on an
13 annual basis."

14 So it means it's mandatory and it has to
15 be done annually; true?

16 A. Based on this, yes.

17 Q. And if you turn to the next page, Page
18 Number 2 of RIMS Number 3 in the WWRIM version
19 from September 30, 2009, under 4.3, it defines all
20 of the -- it lists all of the types of documents
21 that are subject to the cleanout; true?

22 A. Yes.

23 Q. And it says, "The cleanout event conducted
24 by the operating company shall apply the
25 requirements of the records retention schedule to

1 all media formats, hardcopy and electronic,
2 originals or copies, and draft documents during
3 the cleanout event activities."

4 True?

5 A. Yes.

6 Q. So it -- it pertains to all types of
7 documents, not just paper documents; correct?

8 A. Correct.

9 Q. There is a reference to a cleanout
10 communication kit.

11 Have you seen a cleanout communication
12 kit?

13 A. Can you reference me to that sentence?

14 Q. That is under 4.5. "Instructions for
15 accessing and reviewing hold notes will be
16 provided in the cleanout communication kit."

17 A. Yes, I see that.

18 Q. Do you see that?

19 A. Yes. I do now.

20 Q. What is the "cleanout communication kit"?

21 A. I don't know.

22 Q. Did it set forth the methods of destroying
23 or disposing of documents that were no longer
24 under legal hold or retention?

25 A. Well, I can't speak to the contents of the

1 kit itself, but I have general knowledge that
2 users were provided instructions, and I also have
3 an understanding that users were provided lists of
4 legal holds.

5 Q. And the list of instructions would include
6 how to go about destroying documents that weren't
7 under a legal hold or retention; correct?

8 MR. COX: Object to the form.

9 THE WITNESS: They would include
10 instructions how to identify them and bring them
11 to the manager or records officers for approval.

12 BY MR. SWANSON:

13 Q. But would it include instructions about
14 how to go about destroying them? I mean, because,
15 for example, if I've got emails on my computer and
16 they're not under a legal hold or a retention and
17 I've come to the cleanout event for the year and I
18 know if those aren't on retention when I'm going
19 through my stuff, these have to be thrown out,
20 right, destroyed, disposed of, does this cleanout
21 communication kit tell me how to go about doing
22 that so that I eliminate all trace of them?

23 MR. COX: Object to the form.

24 THE WITNESS: I can -- I can't speak to
25 the content of the instructions. I can speak to

1 my general knowledge of how users were using email
2 at that point and how the cleanout days operated
3 in general.

4 BY MR. SWANSON:

5 Q. I didn't ask that. So you don't know if
6 this cleanup communication kit had those
7 instructions about how to go about destroying
8 emails that were -- should no longer be
9 retained -- or other documents; true?

10 A. The reason I can speak to email is my
11 knowledge of how emails were retained at that
12 point in time.

13 Q. Okay. But you're not answering the
14 question. I understand you have information that
15 you want to tell me, but I'm just asking you a
16 very simple question, which is: Do you know if
17 this kit told them how -- employees how they
18 should destroy the records? Let me give you an
19 example. Forget email for a second.

20 Paper documents, okay? I've got documents
21 in my office, I'm a Johnson & Johnson employee.
22 They're not under records retention, they're not
23 under a hold anymore, and I know I'm supposed to
24 destroy them.

25 Do I have an instruction on destroying

1 them? For example, shredding them?

2 MR. COX: Object to the form.

3 THE WITNESS: I don't know, as I mentioned
4 before, what's in the cleanout instructions. I do
5 know that for those paper documents, in your
6 example, on cleanout days they wheeled these blue
7 containers on to the floor to be used for
8 destruction of paper materials, if approved.

9 BY MR. SWANSON:

10 Q. So the approved materials for destruction,
11 they're in a bin that wheels out; is that right?

12 A. That is how a cleanout day was described
13 to me for the sake of paper materials.

14 Q. So somebody was given the task of wheeling
15 this to each office or was it put in a central
16 location, do you know?

17 A. No.

18 Q. And then if you are -- if the records were
19 supposed to be destroyed under this cleanout event
20 policy, you'd put them in that bin; is that right?

21 A. With approvals, yes.

22 Q. What do you mean "with approvals"?

23 A. With the managers and records coordinators
24 approvals, they could be put in the bin.

25 Q. And what did that approval consist of?

1 A. That the employee has been verified to
2 have confirmed the records period and the lack of
3 an applicable legal hold or other reason why the
4 records should be retained.

5 Q. And is that in the WWRIM policy? Is that
6 written out, that there had to be approval?

7 A. I don't know.

8 Q. So where did you get that information
9 specifically that somebody had to specifically
10 approve an employee's destruction of records
11 pursuant to the cleanout policy?

12 A. I had interviewed in the past Karen
13 Skellington and other records officers who
14 described the procedure. I'm not sure if it's in
15 these notes or not.

16 Q. And specifically what did Karen
17 Skellington say about what the manager or
18 whoever's role was in signing off on that and
19 approving it?

20 A. I don't have more specifics than -- than
21 that at this point.

22 Q. Do you know if there was any kind of
23 documentation created?

24 A. I have general knowledge that the
25 sign-offs were in physical form, that there

1 were -- they were physical sign-offs. What
2 documentation that created I don't know.

3 Q. Do you know -- have you seen that
4 documentation?

5 MR. COX: Object to the form.

6 THE WITNESS: I don't recall.

7 BY MR. SWANSON:

8 Q. What's the retention policy of that
9 documentation of sign-offs, if you know?

10 A. I don't.

11 Q. The cleanout day, would that include
12 videos?

13 MR. COX: Object to the form.

14 BY MR. SWANSON:

15 Q. It says all media formats; correct?

16 A. Yeah. I don't have any better
17 interpretation than that.

18 Q. Would include CDs, correct, all media
19 formats, including hardcopy, electronic?

20 A. That would suggest to me that CDs would be
21 included.

22 Q. Did it include, for example, talc samples?

23 A. I would not conclude that based on my read
24 of the policy.

25 Q. What -- and why is that?

1 A. I don't see where samples would be defined
2 as a -- as a record.

3 Q. Was there an equivalent cleanout policy
4 for talc samples and talc grids, if you know?

5 A. I'm not aware of such a policy.

6 Q. But samples, things like samples and grids
7 that were relating to, let's say, testing, if it
8 was -- if talc was being tested and a particular
9 sample was tested and there were -- do you know
10 what a TEM grid is that's generated from
11 electronic microscopy? Generally, you know,
12 you've heard of it; right?

13 A. I've heard the term "grids."

14 Q. Okay. And do you know -- the policies --
15 at some point, did the retention policies have
16 something to say about that kind of physical
17 evidence like a sample or a grid?

18 MR. COX: Object to the form.

19 THE WITNESS: Not that I'm aware.

20 BY MR. SWANSON:

21 Q. So at page 2 of RIMS 3, you see under
22 4.33, and it just puts in writing there what we
23 had talked about, which is that essentially a
24 document hold suspends the direction -- the
25 destruction or deletion of records; correct?

1 A. Yes. Suspends operation of the policy.

2 Q. Right. Okay. If you look at RIMS 3,
3 page 3. Here it is. I knew I saw that in there.

4 You see under 4.6 it talks about a
5 cleanout communication kit which will contain at
6 minimum the information listed below?

7 A. Yes.

8 Q. And that includes the proper methods of
9 destruction and deletion; correct?

10 A. I see that, yes.

11 Q. So presumably if we had the cleanout
12 communications kit, that would tell us
13 specifically how to destroy, like, paper documents
14 and that sort of thing; true?

15 A. For that particular event, yes.

16 Q. And under 4.7 it says, "The activities and
17 participation shall be documented and reported."

18 Again, does Johnson & Johnson -- you don't
19 know how long it retains those reports, do you?

20 A. Correct.

21 Q. Do you know if it still has them, back to
22 2009, for example?

23 A. I don't know one way or the other.

24 Q. Under -- at the very bottom it says, "new
25 standard."

1 Do you see that, "Version 1.0"?

2 A. Yes.

3 Q. It says, "new document issued," has the
4 date 30th of September 2009.

5 But it has that under -- it says "revision
6 history."

7 So was that a revision or not?

8 A. Well, I believe that the -- the
9 overarching policy is 1.1, but this is the first
10 release of the records cleanout standards, so it's
11 designated 1.0.

12 Q. So let's look at the subsequent version of
13 this. Exhibit 28.

14 Do you have that in front of you?

15 A. Yes, I do.

16 Q. If you go to RIMS 3. It's seven pages in
17 or something like that.

18 Do you have that in front of you?

19 A. Yes.

20 Q. And this version, Version 2.0, was dated
21 January 31, 2011; right?

22 A. Yes.

23 Q. And do you see now that it's called the
24 "records cleanup events standard"?

25 A. Yes.

1 Q. This is the same basic policy, though;
2 correct?

3 MR. COX: Object to the form.

4 THE WITNESS: I mean, subject to the
5 revision history on page 3, yes.

6 BY MR. SWANSON:

7 Q. Okay. So there was some sort of changes,
8 fine-tuning to the policy at that point; is that
9 right?

10 A. Yeah. They are listed in the -- in the
11 table.

12 Q. Why was the name changed from "cleanout"
13 to "cleanup"?

14 A. Well, I can only point to the revision
15 history that says that for the law department,
16 that change was requested.

17 Q. Do you know why the law department decided
18 to call it a "cleanup" instead of a "cleanout"?

19 A. No.

20 Q. Did the -- now, when you interviewed
21 folks -- and I think there were four or five of
22 them -- about this, they all referred to it as
23 "cleanout," didn't they?

24 A. I would have to check. There's some sort
25 of a search. I can do some quick searches.

1 Q. So let me -- if you look at -- I can give
2 you some references there to help you out.
3 Page 5 -- page 30, 31, 34, and 55. And you're
4 looking at your notes, and the paginated version
5 of your notes is Exhibit 26.

6 A. I'm sorry, one more time, please?

7 Q. Oh. 5 is, I think, the first reference,
8 to about two-thirds of the way down, the "annual
9 cleanout days." This was...

10 A. Yes. Kate Gillespie.

11 Q. And then the next one was, I think, Dodd
12 at page 30.

13 You see "cleanout" at the bottom?

14 A. Yes.

15 Q. "Cleanout days" stopped around 2011?

16 A. Yes.

17 Q. So we don't need to go through each and
18 every one of them, but these folks were still
19 talking about "cleanout" at the point you
20 interviewed them in 2018; correct?

21 A. Yes.

22 Q. So -- and yet the policy was to call it
23 "cleanup" as of 2011. So it sounds like that
24 never really caught on, did it, "cleanup" as
25 opposed to "cleanout"?

1 MR. COX: Object to the form.

2 THE WITNESS: I just wrote down as they
3 told me.

4 BY MR. SWANSON:

5 Q. But when I first asked you about
6 "cleanout," you understood what I meant
7 immediately; right?

8 A. Yes.

9 Q. From those conversations?

10 A. Yes.

11 Q. And did they continue to -- did Johnson &
12 Johnson continue to call those kits "cleanout
13 communication kits," do you know?

14 A. I don't know.

15 MR. COX: Are we at a good point for a
16 short break?

17 MR. SWANSON: Sure. Yeah.

18 THE VIDEOGRAPHER: This marks the end of
19 Media Number 2 in the deposition of James
20 Mittenthal. We are going off the record at 11:46.

21 (Recess taken.)

22 THE VIDEOGRAPHER: On the record at
23 12:03 p.m. This marks the start of Media Number 3
24 in the deposition of James Mittenthal.

25 Counsel, you may continue.

1 (Whereupon, Plaintiff's Exhibit 30 was
2 marked for identification.)

3 BY MR. SWANSON:

4 Q. Mr. Mittenthal, I'm handing you Exhibit 30
5 and, Counsel, if you need to look at this, it's a
6 portion of a records retention schedule, it
7 appears to be.

8 Do you have that in front of you?

9 A. I do.

10 Q. So this is the Johnson & Johnson Consumer
11 records and information management records
12 retention schedule department records and
13 information management; right?

14 A. It appears to be.

15 Q. And this is -- is this the current one?

16 A. I don't know. I'm just looking at the
17 effective date, 14 May 2018, what it says on it.

18 Q. It's recent, it's not current, but you're
19 not sure if this is current; is that true?

20 A. I would have to confirm that.

21 Q. Okay. If you look at Page Number 2, do
22 you see there's a retention schedule for records
23 cleanup there?

24 A. Yes.

25 Q. And that would be -- that says for the

1 annual cleanup for Consumer U.S.

2 Do you see that?

3 A. Yes.

4 Q. "May include approval memos, cleanup kits
5 and/or housekeeping information"; right?

6 A. Yes.

7 Q. So that's -- that's the cleanout or
8 cleanup event that we were talking about before;
9 true? That's what that's referring to, the
10 records retention on the kits related to that?

11 MR. COX: Object to the form.

12 THE WITNESS: It appears to be so, yes.

13 BY MR. SWANSON:

14 Q. And so -- and the records retention on
15 that was how many years?

16 A. The time it's active plus ten years.

17 Q. So if there was a cleanout communication
18 kit as part of, let's say, the 2009 Version 1.1
19 policy that was being used, would "active" -- how
20 long would "active" be?

21 A. I don't know. I would want to consult the
22 definitions.

23 Q. Okay. So -- well, you don't believe that
24 in the WWRIM policy what is meant in this records
25 retention is defined by the term "active," do you?

1 A. I have seen somewhere here, on -- on
2 WWRIM, RIMS 12.

3 Q. Which exhibit is this?

4 A. This is -- the first version I grabbed was
5 Version 2.0.

6 Q. Okay. That's fine. Got it.

7 A. RIMS 12, page 2. And I may be able to
8 reference a later version that I was just looking
9 for a basic definition of "active."

10 Q. That's fine.

11 A. And it says, "Retain the record or
12 information while the document is active, in
13 force, or in use. Once the document is no longer
14 active, then the retention period starts and is
15 calculated."

16 Q. Good. So, in other words, the 2009 RIMS
17 got replaced by this 2011 one in January 2011. So
18 for the 2' -- those cleanout kits from the 2009
19 policy, they would be retained until 2021,
20 correct, according the that policy?

21 A. Yeah. I don't want to interpret what they
22 mean by the document being active. I don't know
23 how to interpret that against the cleanout
24 information. It may be that's the case.

25 Q. Okay. But at a minimum, it would be

1 10 years past the date of that policy; right?

2 A. Yes.

3 Q. Okay. That's all I have about that one.

4 Now, we had talked about how the cleanout
5 policy included various formats of records and
6 documentation; correct?

7 A. Yes.

8 Q. And -- "including hardcopy, all media
9 formats, electronic," that would include x-ray
10 imagery; true?

11 A. I don't know.

12 Q. Well, if there were -- if there were TEM
13 or SEM images on any of these media, that would be
14 a document included in the policy; right?

15 MR. COX: Object to the form.

16 THE WITNESS: I would want to look and
17 check the policy and see how they -- how they
18 define "document," if it includes that type of
19 media. I just don't know.

20 BY MR. SWANSON:

21 Q. Well, it says, "all media formats,
22 hardcopy and electronic, originals or copies, and
23 draft documents."

24 You're not thinking that this pertains
25 only to written words, are you?

1 A. No.

2 Q. Okay. So it would include images;
3 correct? It would include sound recordings on
4 those types of media?

5 MR. COX: Object to the form.

6 THE WITNESS: I'm going to double-check
7 the worldwide RIMS and see if there is a complete
8 definition of what they consider a record to be.

9 Okay. Actually, it's on the first page.
10 I'm once again looking at the 2.0 policy.

11 BY MR. SWANSON:

12 Q. Okay.

13 A. "The form of records and information
14 includes but is not limited to paper, electronic,
15 microfilm, microfiche, photograph, map, magnetic
16 or optical disk or tape, software or video, or
17 other recorded information."

18 Q. So that would include images?

19 A. I'm just checking the current -- the 5.0
20 version to see if that definition has changed. I
21 don't see a -- I checked the definition version of
22 4.0 and it appears to be similar.

23 Q. Okay.

24 A. I recognize that an x-ray is a media that
25 contains recorded information.

1 Q. This is an inclusive policy, because when
2 it says "any form of recorded information created,
3 maintained, or received by Johnson & Johnson," it
4 says those records and information include but are
5 not limited to. So this is an included -- this is
6 a very inclusive policy, correct, in terms of the
7 kinds of information that these cleanout days were
8 affecting?

9 MR. COX: Object to the form.

10 THE WITNESS: Yeah. I just note that
11 they -- that they inserted audiovisual material in
12 the later definition. Maybe some other changes,
13 too.

14 BY MR. SWANSON:

15 Q. But in Version 2.0, it said "microfilm,
16 microfiche, photographs," so that information was
17 included in there, too; correct?

18 A. Yes.

19 Q. Did you consult with Johnson & Johnson on
20 any of the changes that went into these various
21 WWRIM policies?

22 A. I have -- I believe in my notes from Karen
23 Skellington possibly there are some references to
24 some of the changes.

25 Q. Let me ask a different question. Were any

1 of -- were you -- did you give input on any
2 changes that were made in these policies before
3 they were made, or at the time they were made?

4 A. I did not.

5 Q. Now, you mentioned Karen Skellington. You
6 talked to her about the changes in the WWRIM; is
7 that right?

8 A. Some of the changes.

9 Q. Where is that in your notes?

10 A. Page 59 of your numbering.

11 Q. Can you point me to it?

12 A. Oh, sure. It's about 15 lines down.
13 There's a line by itself. "WWRIM assigns every op
14 code," and below that it starts, "18 standards put
15 out in 2009, now '17. Other guidelines existed
16 pre2009. Karen came in, in 2008 and worked to
17 consolidate, remove cleanup standard." Moving --
18 moving down the document of 5.0 is "current
19 version effective April '17." Some notes about
20 how the standards evolved, et cetera.

21 Q. Now, each of these standards subsequent to
22 1.0 has a revision history; is that right? If you
23 look within the first few pages, for example, you
24 know, you go to 3 or 4, you take Version 3, for
25 example.

1 Do you have that?

2 Which is marked as Exhibit 29.

3 And I think --

4 A. I do see "revision histories."

5 Q. And do you have the WWRIM policy Version 3
6 in front of you?

7 A. Yes, I do.

8 Q. And six pages in to that is a revision
9 history generally of this document; correct?

10 A. Well, the -- the top document. The actual
11 policy document as opposed to the standards
12 underneath it, yes.

13 Q. Now, what do you mean "as opposed to the
14 standards underneath it"? because the standards
15 underneath it include the RIMS 1 through how many
16 ever it goes to; correct?

17 A. Well, RIMS -- RIMS 1 is actually the
18 standard and then prior to RIMS 1 -- and I'm
19 looking at the 3.0 version that we're talking
20 about -- there is a policy, call it a preamble, or
21 an introductory section which is denoted as the
22 worldwide records and information management
23 policy. And then the things beneath that are
24 known as -- are denoted as standards.

25 Q. Okay. But so this -- but this history

1 that's given on the policy, it includes changes --
2 detail -- it's a -- would you agree that that's a
3 detailed accounting of what the changes were made
4 in terms of the language of the policy? If you
5 look at page 6 there again?

6 A. Yeah. I'm looking at it and it appears to
7 be changes just made to these first few pages
8 which constitute the policy. Then, within that,
9 each standard also has its own change history.

10 Q. And you see there in terms of this Version
11 3.0 of the WWRIM policy, it notes that the -- and
12 by this time, they were calling it the "cleanup
13 event," it says "retired RIMS 3."

14 Do you see that?

15 A. I'm sorry. What page are we on?

16 Q. We're page 6 still. And this is the WWRIM
17 policy December 31, 2013.

18 A. Yes, I see it.

19 Q. And is -- is this an accurate accounting
20 of the changes that are made in the policy from
21 one to the next?

22 MR. COX: Object to the form.

23 THE WITNESS: Yes. Inasmuch as now the
24 standards jump from RIMS 2 to RIMS 4.

25 BY MR. SWANSON:

1 Q. Okay. And the way that these histories
2 are written is that it's written with a lot of
3 detail; right? Going back to page 6, it says
4 "paragraph 2, removed sentence redundant tied with
5 paragraph 3." You know, above there it
6 says "where applicable change throughout
7 'employee' to 'associate.'"

8 These are very specific references to
9 where the changes are being made, specifically
10 what changes are being made in the policies as we
11 get to subsequent versions; right?

12 A. Yes.

13 Q. So in theory, we should be able to take a
14 subsequent version like Version 3 and if we didn't
15 have 2 and 1, reconstitute, rewrite from it the
16 prior version; correct?

17 MR. COX: Object to the form.

18 THE WITNESS: It would depend on the
19 nature of the changes. To the extent that they --
20 they were word level, you could back -- back your
21 way through it.

22 In this case, there appear to be -- I
23 mean, there were references and sentences removed
24 that might make it difficult to reconstitute it
25 completely. But the -- you could create a rough

1 facsimile of an earlier version.

2 BY MR. SWANSON:

3 Q. But it should -- it's supposed to be an
4 accurate accounting of what has been changed
5 version to version; correct?

6 A. Yes.

7 Q. And that accounting includes, you know,
8 everything that's changed from the beginning to
9 the current version; correct?

10 A. Yes.

11 Q. And so if you go to -- this was Version 3.
12 And we saw in Version 3 there was a reference,
13 right, at page 6 to the cleanup event that was
14 specified under RIMS Standard 3 in a previous
15 version having been suspended or removed; correct?

16 A. Yes.

17 Q. And, in fact, in this Version 3, it's --
18 if you thumb through it, you can see that there is
19 no RIMS Standard 3; correct?

20 A. Correct.

21 Q. And if you go to 4, Version 4, again, if
22 you go to the revision history, page 6, it has --
23 again it states how -- the revision history in the
24 same sort of way that it did under Number 3 and it
25 includes that reference to the cleanup event;

1 correct?

2 A. Yes.

3 Q. And it has a full history from Version 1.0
4 up to this current version stating what the
5 changes were; true?

6 A. Yes.

7 Q. And if you go to Version 5, which is
8 Exhibit 24, and you go to page, looks like 5
9 through 8 -- do you see that? -- is the revision
10 history?

11 A. Yes.

12 Q. And you see there were a lot of revisions
13 made from 4 to 5?

14 A. Yes.

15 Q. Is there a Version 6 or is this the latest
16 version, Number 5?

17 A. Well, I noted that when I spoke to Karen
18 Skellington she said that 5.0 is the current
19 version and that that was effective in April of
20 2017 which is what is reflected in this document
21 (indicating).

22 Q. Good. Now if we go to -- and you see the
23 changes are reflected for Number 4; right?

24 A. Yes.

25 Q. Now, if you go to Version Number 3 in its

1 version history, you see that?

2 A. Yes.

3 Q. Where is the reference to cleanout event?

4 Or cleanup event in this history?

5 A. I don't see it.

6 Q. So if all we had in front of us was this

7 Version 5, we wouldn't know about the cleanout

8 event, would we?

9 MR. COX: Object to the form.

10 THE WITNESS: Well, we certainly wouldn't

11 know about it from the revision history pertaining

12 to 3.0.

13 BY MR. SWANSON:

14 Q. Well, is -- well, if I've got a current

15 version in front of me and I've got this history

16 that's supposed to be a faithful history of these

17 changes, I don't know about this history of a

18 cleanout event, do I?

19 True?

20 A. I don't see it in the history.

21 Q. Okay. So -- so this is no longer an

22 accurate accounting -- the version history is no

23 longer an accurate accounting of the version

24 histories; true?

25 MR. COX: Object to the form.

1 BY MR. SWANSON:

2 Q. You have in front of you, it's not in the
3 version history; correct?

4 A. Right. I'm just checking to -- to
5 understand if the numbering of the standards is
6 still as it was before, and the document does go
7 from RIMS 2 to RIMS 4 with no RIMS 3. So there is
8 an artifact in the sense that that RIMS 3 is still
9 not represented.

10 Q. Right. It's gone, because it was gone
11 after Version 3 of the WWRIM; true?

12 A. Yes.

13 Q. And that's when -- and then the version
14 history, though, in Number 3 and 4 accurately
15 reflected that that section had been removed
16 because that event was no longer in force;
17 correct?

18 A. Correct.

19 Q. And in Version 5 of the history, that
20 disappears; right? It's not there; true?

21 A. I don't see it.

22 Q. Okay. So this version history has been
23 changed and it no longer accurately reflects what
24 happened; true?

25 A. It no longer reflects the -- in that area

1 in the revision history no longer reflects the
2 removal of the cleanout standard.

3 Q. And do you know who made the decision to
4 remove the reference to the cleanout days from the
5 Version Number 5 WWRIM Johnson & Johnson worldwide
6 policy?

7 It's not in your notes, is it?

8 A. I don't believe so.

9 Q. I didn't see it there.

10 A. I was just looking in my notes to
11 understand who -- who would have been a point
12 person at that point in time.

13 Q. Did the lawyers make that decision?

14 A. I don't know.

15 Q. Did you see -- going back to Version
16 Number 4 of the WWRIM policy, it says
17 "Exhibit 23." If you go to Page Number 6.

18 Do you have that in front of you?

19 A. Yes.

20 Q. It -- it states there that Johnson &
21 Johnson -- in the reference to the cleanup event
22 states that Johnson & Johnson has changed its
23 philosophy on annual cleanups; right?

24 A. Yes.

25 Q. So that reference to a change in

1 philosophy is now gone in Version 5; correct?

2 A. I don't see it.

3 Q. And that change in philosophy, do you have
4 an understanding of what that change in philosophy
5 was specifically?

6 A. Simply as -- as is stated in the notes,
7 "Associates shall independently manage their
8 records and information during the normal course
9 of business."

10 Q. Okay. Now, you know that -- I'm going to
11 switch gears a little here on you.

12 You know that there's an issue of exposure
13 in the Philippines in this case; correct?

14 A. Yes.

15 Q. In the Leavitt case. And of exposure in
16 Hong Kong in the Fong case; true?

17 A. Yes.

18 Q. And that -- are you aware that the talc
19 that was used for Johnson's Baby Powder that was
20 manufactured or packaged at those locations came
21 from Korea?

22 A. I'm -- I have a general awareness of that.

23 Q. Okay. Now, of the retention schedules --
24 I want to get back into the retention schedules
25 briefly here.

1 What is the earliest retention schedule
2 that has been produced to us that you're aware of
3 that affects Johnson & Johnson Philippines,
4 Johnson & Johnson Hong Kong, or the Asia Pacific?
5 Well, let me -- let me ask a foundational question
6 first.

7 Are those -- I noticed there was some
8 references in your notes to APAC, A-P-A-C. Does
9 that sound familiar to you? And I assumed that
10 that referred to Asian Pacific? Asia Pacific or
11 something like that?

12 A. I think -- I'd have to see it in context.

13 Q. Let me see if I can find a reference.

14 Oh, there's a reference here at page 3 of
15 your notes.

16 A. Your page 3?

17 Q. Yes. Right. That's correct. This is
18 again Exhibit 26.

19 A. So this is Tom Doyle and Judy Dowling?

20 Q. Yes. Do you see in the first paragraph
21 there, there's a reference to APAC?

22 A. Yes.

23 Q. And without having you read through the
24 rest of your notes right now, I'll just represent
25 to you there are other references where you use

1 that acronym, APAC.

2 What does that stand for?

3 A. I believe it's Asia Pacific, but I don't
4 recall --

5 Q. Okay. Let's --

6 A. -- confirming that.

7 Q. Sorry. Didn't mean to cut you off.

8 Can you turn to page 20. I see another
9 reference to it.

10 Do you see where you were speaking to an
11 individual named Nicholas Zhu?

12 A. Yes.

13 Q. And it says "responsible for APAC." Then
14 it says "Thailand, China, Philippines," et cetera;
15 correct?

16 A. Yes.

17 Q. So do you believe that refers something to
18 Asia Pacific; correct?

19 A. Yes.

20 Q. So let me ask you questions broadly about
21 any retention schedules or policies that would
22 have impacted -- been in effect in the
23 Philippines, in Hong Kong. Let's start with those
24 two and we'll probably include China, but that
25 might be more recent.

1 But so -- and Korea.

2 What was the first retention policies that
3 would have been in effect and controlled retention
4 of documents -- retention and disposition of
5 documents at Johnson & Johnson Philippines?

6 A. I don't know the year that that would have
7 been applicable, the first year.

8 Q. Do you -- was the 1997 policy, which is
9 the first policy that has been produced to us, the
10 oldest policy and the oldest one that you've seen,
11 according to your testimony, did that apply to
12 Johnson & Johnson Philippines?

13 A. I would have to confirm that.

14 Q. Okay. And before you go about -- and does
15 the policy itself say whether or not it affects
16 it, whether or not that policy is the policy for
17 the Philippines or the Asia Pacific, or whether
18 it's just domestic?

19 A. Yeah. The document itself does not have a
20 scope associated with it.

21 Q. So you don't -- you don't know whether or
22 not this records retention guideline schedule
23 applied to Asia Pacific, to Hong Kong, or the
24 Philippines; correct?

25 A. That's correct.

1 Q. Do you know if any of the records
2 retention schedules that Johnson & Johnson has
3 apply to Johnson & Johnson Philippines?

4 A. I would have to look at the scope of each
5 one. I don't know offhand.

6 Q. But there's nothing in this 1997 guideline
7 for records retention schedule that tells you what
8 applies broadly to all of their operating
9 companies; correct?

10 A. Correct.

11 Q. And I don't want you to guess, but would
12 you agree with me that the natural inference
13 looking at this is that it did not apply; correct?

14 MR. COX: Object to the form.

15 BY MR. SWANSON:

16 Q. Since it says Johnson & Johnson Consumer
17 Products Companies. I don't want you to
18 speculate. So. Okay.

19 And you can't tell me right now what the
20 first year is that there is a retention policy
21 that applies to the Philippines, to J&J China, or
22 J&J Hong Kong; true?

23 A. You know, I have a general knowledge from
24 talking to people at the company that there were
25 retention practices. I can't speak to the

1 specific schedules that apply.

2 Q. And we'll get into that in a minute.

3 So you're not sure if any of the retention
4 schedules apply, and if you have, you know,
5 information about that even after the break as to
6 whether these did or not, we can revisit it.

7 Now, when you say you have information
8 generally about retention practices, is this
9 something that's reflected in your notes?

10 A. Yes.

11 Q. And these are retention practices at which
12 locations?

13 A. It was not location-specific. It was
14 simply an indication of how long certain materials
15 were held.

16 Q. By whom? In other words, which operating
17 company are we talking about now? because I'm
18 obviously interested in asking right now, but just
19 about the Philippines, Hong Kong, China, Korea.

20 A. I would need to reference a couple of
21 pieces of my notes here.

22 Q. I don't know what page you're at, but if
23 you look at pages 20 and 21, there are references
24 to overseas operations. I don't know if that --
25 any of that helps you.

1 A. Yes. And I was looking at Don Hicks who
2 indicated that in 2009, a global specification was
3 created. I'm jumping now to page 20.

4 Q. Okay. Page 20. This is Don Hicks?

5 A. Well, this is now Nicholas Zhu --

6 Q. Wait. Let's go -- since you are the one
7 who raised the reference to Don Hicks --

8 A. Okay.

9 Q. -- what page of that, that were you
10 looking at specifically?

11 A. Oh, that was -- just lost it. Page 13.

12 Q. Okay. This is talking about a global talc
13 spec created in 2009; correct?

14 A. Yes.

15 Q. Okay. I'm asking about retention
16 policies.

17 A. Okay.

18 Q. So if you can locate the place in your
19 notes, if you have -- you haven't been specific as
20 to the Philippines or Hong Kong or Asia Pacific or
21 Korea, remember, my query is directed to finding
22 out what retention schedules; policies with
23 respect to retaining documents; destroying,
24 disposing of documents, as to those areas. That's
25 what I'm looking for.

1 A. Right. Okay.

2 Q. And if you find information that, that you
3 have as a representative of Johnson & Johnson,
4 tell me.

5 MR. SWANSON: While he's doing that, let's
6 go off the transcript record briefly, and I'm
7 going to go check on something and you keep
8 looking.

9 MR. COX: Let's go off the record
10 entirely.

11 MR. SWANSON: What's that?

12 MR. COX: Let's go off the video record,
13 too.

14 MR. SWANSON: Why? I mean, I'm going to
15 be back in two seconds. I mean, we don't need to
16 do that whole thing of getting off it. I'll be
17 back in two seconds. I want him to have time to
18 look through that.

19 (Off the stenographic record.)

20 MR. SWANSON: Back on the record.

21 BY MR. SWANSON:

22 Q. Have you located some information about
23 retention policies or retention guidelines that
24 would have been in effect -- or practices in
25 effect in the Philippines, Korea, China, or Hong

1 Kong?

2 A. Well, I spoke to -- this is on page 42. I
3 have a reference to a conversation with Uday
4 Sharan who was a sourcing manager who was based in
5 the -- in that region, and he was specifically
6 talking about Thailand, but he indicated that
7 the -- from his perspective, they kept documents
8 for -- and he was talking about the manufacturing
9 records, that the retention on those was five
10 years. I don't -- I have not yet found other
11 references to any retention schedules for those
12 particular regions.

13 Q. Now, you knew coming in to this deposition
14 as -- you knew -- you knew that your assignment
15 here, part of it, was to talk about retention
16 schedules; right?

17 A. Yes.

18 Q. And so as a representative for Johnson &
19 Johnson sitting here today, knowing that this was
20 part of the assignment and knowing that these
21 areas of the world and their retention policies
22 were relevant to the case, you don't have any
23 information to provide today; correct?

24 MR. COX: Object to the characterization.
25 Object to the form of the question.

1 THE WITNESS: What I do know is that there
2 were retention schedules in those regions, the
3 retention practices and/or schedules; that there
4 was information saved for periods of time. For
5 example, Don Hicks indicated that the -- and Uday
6 indicated that those materials were saved five
7 years plus one, six years.

8 I have an understanding that information
9 in those regions that was stored in the United
10 States was subject to the retention schedules that
11 we've already discussed.

12 I have also the understanding that
13 those -- there are physical files in those regions
14 of the world that were consulted and searched for
15 materials, and that there were materials that were
16 stored off site there were consulted.

17 I don't have the particular retention
18 schedule that they were responsive to, but I
19 understand that there was a practice for
20 maintaining information in those regions.

21 BY MR. SWANSON:

22 Q. Specifically as to the Philippines, do you
23 know if there's ever been a formal retention
24 schedule for documents archived, retained, kept,
25 generated at J&J Philippines?

1 A. I don't know at this moment.

2 Q. And do you know if there has ever been a
3 formal policy for J&J Hong Kong for the retention,
4 archiving of documents?

5 A. I would -- once again, I don't know, and
6 it may be that the schedules I have apply to --
7 the current schedules apply to that time period.
8 I just don't know.

9 Q. I understand.

10 A. I'm sorry, applied to that --

11 Q. You say maybe.

12 A. I --

13 Q. You say maybe --

14 A. Let me correct what I said. Not applied
15 to that time period. Applied to that region. I
16 misspoke.

17 Q. Now, just briefly, this reference you made
18 to Uday Sharan, that's for Thailand; right?

19 A. Yes.

20 Q. He's not talking about the Philippines.

21 A. I understand that.

22 Q. Right. And he's not talking about Hong
23 Kong; correct? And -- right?

24 A. Correct.

25 Q. And the source of that talc was European

1 talc, correct, not Korean talc?

2 A. He was speaking to the retention of
3 materials in Thailand, and I drew from my
4 understanding of my conversation with him that
5 those materials, there were retention practices in
6 that area and in the Asia Pacific region.

7 MR. SWANSON: Move to strike.
8 Nonresponsive.

9 I think that's a good time to break for
10 lunch.

11 Let's go off the record.

12 THE VIDEOGRAPHER: Off the record.

13 Time is now 12:52 p.m.

14 (Lunch break taken.)

15 THE VIDEOGRAPHER: On the record at
16 1:55 p.m. Counsel, you may continue.

17 MR. CARPENTER: Counsel, can I make that
18 quick --

19 MR. SWANSON: Sure.

20 MR. CARPENTER: This is Erin Carpenter. I
21 failed earlier when I was putting my appearance on
22 the record to also indicate that I am here -- I'm
23 specially appearing on behalf of Imerys U.S.A.,
24 Inc. That's it. Thank you.

25 BY MR. SWANSON:

1 Q. Good afternoon, Mr. Mittenthal. We're
2 back on the record after the lunch break.

3 A. Good afternoon.

4 Q. I was asking you about retention policies,
5 schedules, procedures that apply to the Asia
6 Pacific or to the Philippines, Hong Kong, China,
7 and I'd asked you about the policies that have
8 been produced in this case going back to 1997 and
9 you weren't sure which of any of those policies
10 applied to J&J's operating companies in those
11 regions and countries; correct?

12 A. Correct.

13 Q. Have you -- have you looked at any of
14 those policies since we were discussing that
15 earlier?

16 A. I've determined that I will -- I'm not
17 able to ascertain based on what I have at my
18 disposal right now.

19 Q. And, based on your conversations with
20 various folks that are reflected in your notes or
21 any subsequent conversations you have, other than
22 what we've already discussed, you're not -- well,
23 strike that.

24 We've discussed what you had in your notes
25 with respect to any retentions over -- overseas;

1 correct?

2 A. Generally, yes.

3 Q. And you're not -- then just to kind of
4 close the loop, you're not aware of what, if any,
5 retention policies were in effect at the J&J
6 Philippines; correct?

7 A. Correct.

8 Q. And you're not aware of any retention
9 schedule that was in effect at J&J Hong Kong;
10 correct?

11 A. Correct.

12 Q. Are you familiar with worldwide talc
13 surveys? Did you hear anything about that?

14 A. I have an understanding of that, yes.

15 Q. Other than the survey documents themselves
16 that were produced -- and there were a few of
17 those produced -- do you have any information
18 about retention for documents related to Korean
19 talc that was used in Johnson's Baby Powder in
20 Hong Kong and the Philippines?

21 A. I don't, no.

22 Q. What is the current retention schedule
23 for -- and this may include different types of
24 documents, but for documents related to the
25 testing of talc for mineral contaminants like

1 asbestos?

2 A. Well, I would have to consult the -- the
3 schedule.

4 Q. Why don't you go ahead and do that. In
5 fact -- well, before you consult the schedule,
6 because obviously I want to be -- I want us to be
7 as efficient as we can be with our time -- have
8 you seen something in the retention schedules that
9 you believe applies to analytical testing reports
10 that would be reports or, for example, the actual
11 films or digital images from microscopy or the
12 images or charts that would come from, I think,
13 EDS or, you know, spectrographs, that sort of
14 thing?

15 A. I don't recall with specificity. I have
16 seen in the departmental schedules references to
17 testing. I've seen references to testing in
18 supplier agreements and I've seen references to
19 testing in legal hold notices.

20 Q. Would you know where to look in the
21 retention policies for something like that? Would
22 it be under R&D?

23 A. Well, I -- because the schedules are
24 departmental in scope, I would look under R&D. I
25 would look under manufacturing. I might look

1 under quality. There's a couple places where I
2 might look.

3 Q. Okay. I'd like to find out what the
4 retention on these testing documents was as of
5 1997. And then if we need to talk about it
6 currently, I want to know what the retention on
7 that would be. And to be clear, what I'm looking
8 for is testing-related documents on both finished
9 product and on the cosmetic talc products and also
10 on talc ore. And milled -- milled ore also, just
11 to be clear.

12 I don't know if this helps you. But at
13 page 190 of the 1997 policy, there's a reference
14 to manufacturing and material analyst reports. I
15 mean...

16 A. Yeah. I just about caught up to you, I
17 was on 188.

18 Q. Okay.

19 A. I mean, I'm not an expert on the testing
20 process. I see -- I'm just looking for the
21 word "test."

22 I see, for instance, test cases on 188. I
23 don't know if that applies or not. I'm going
24 to -- I guess from there, I see material analysis
25 reports as you mentioned.

1 I'm looking under -- I'm now up to
2 "quality," page 221. And I see an entry called
3 "analytical chemistry testing finished product
4 devices."

5 Q. I'm sorry. Where is that again?

6 A. The top of 221. Once again, I don't know.
7 I'm not an expert on the testing process. I don't
8 know if that applies. I'm just looking for places
9 where the word "testing" appears in relevant
10 categories.

11 Q. And what's the minimum retention for --
12 well, first of all, let's go back, and I should
13 have asked you as you were going here. We talked
14 about material analyst analysis reports.

15 What's the minimum retention for those as
16 of 1997?

17 A. I think that was LP, if I remember
18 correctly. That was page 188.

19 Q. 190.

20 A. Oh, I was on 188. Yeah, 190. LP plus 6.

21 Q. What does that mean?

22 A. Life of the product. In other words, the
23 expected life of the product in the marketplace
24 plus six years.

25 Q. Does that mean like shelf life?

1 A. I don't know if it equates to shelf life.

2 It may.

3 Q. What else would it equate or would it
4 reference life of the product as in its baby
5 powder, and baby powder is going to continue to be
6 around, so essentially it would always be under
7 retention. See what I'm saying?

8 A. Actually, I don't. I'm sorry.

9 Q. Well, life of the product. I mean,
10 there's a life of a product, the period of time
11 during which a company manufactures a given
12 product; right?

13 A. Oh, yes.

14 Q. You know, under various specifications or
15 particular specification and it's a product like
16 Johnson's Baby Powder. I mean, that could be
17 called "life of the product"; right?

18 A. Yes. You're right.

19 Q. But life of product here under "material
20 analyst reports," you're not sure what that means
21 in that context? I mean, is that shelf life? Is
22 it something more than shelf life? Is it, you
23 know, how long they've been -- they are going to
24 manufacture Johnson's Baby Powder?

25 A. Yes. And I -- you know, I don't think I

1 want to interpret that without a little bit more
2 research.

3 Q. So I know there's a lot of questions here
4 today. But you were aware that these were central
5 issues about testing in these cases, right, in
6 talc testing, correct?

7 MR. COX: Object to the form of the
8 question. Object to the characterization that
9 this is a central issue or that a lot of the
10 questions today regard central issues in the
11 deposition notice or this case -- these cases.

12 THE WITNESS: I was aware that the -- one
13 of the noticed topics had to do with retention.

14 BY MR. SWANSON:

15 Q. And you also, though, know that in these
16 cases, even though you're not an expert on
17 testing, that testing and test results and the
18 retention of those testing is an important issue
19 to these cases; correct? The talc testing I'm
20 referring to.

21 A. Well, I wouldn't want to give an opinion,
22 but I understand that it has been raised as an
23 issue.

24 Q. So. And you understood that as a
25 spokesperson for Johnson & Johnson, you were to be

1 prepared to speak on these issues, correct,
2 because we've asked about them?

3 MR. COX: Object to the form.

4 THE WITNESS: I understand that the
5 retention of documentation is a topic and that I
6 am prepared to speak on that.

7 BY MR. SWANSON:

8 Q. Okay. But, as you sit here right now,
9 you're not prepared to tell me what in 1997 life
10 of the product meant as to these material analyst
11 reports; correct?

12 A. That's right.

13 Q. Can you point -- and if we go to -- I
14 think you referenced 221 of this 1997 retention
15 schedule, "analytical chemistry testing finished
16 product devices"?

17 A. Yes. And, once again, I'm not an expert.
18 I don't know if that even applies, but I noted the
19 word "testing" was -- was in there.

20 Q. Okay. But you don't even know if that
21 applies to talc, do you?

22 A. Correct.

23 Q. Going three down, you see where it says
24 "analytical reports and requests"?

25 A. Yes.

1 Q. On page 221. What does that refer to?

2 A. I can only speak to it's -- it's plain
3 English. I don't -- I'm not here to interpret
4 what that means.

5 Q. I don't want to waste time going through
6 each of the policies like this.

7 Are you prepared, as you sit here today,
8 to talk about specifically what the retention
9 schedule is and the retention period for testing
10 reports?

11 A. Well, as I mentioned, I'm not specifically
12 able to sit here and say LP is identical to shelf
13 life or make that assessment. What I can say is
14 that I -- in addition to gathering the schedules,
15 I interviewed people. I spoke to, for instance,
16 Don Hicks, and Mr. Hicks gave a -- an appraisal
17 that -- of testing, quality testing for talc that
18 it was used in conjunction with the manufacturing
19 process, that it's -- retention of those materials
20 is tied to the expected shelf life of the product.
21 Now, it may be the shelf life of the product plus
22 a year; it may be double the shelf life of the
23 product. It has changed over time, but I have a
24 general understanding from Mr. Hicks that testing
25 materials are generally held at least the expected

1 shelf life of the product plus some additional
2 amount of time.

3 Q. And how long is the shelf life of
4 Johnson's Baby Powder?

5 A. Well, I'm going to just refer to my
6 discussion with Mr. Hicks. And that's at the top
7 of -- I'm sorry. I'm on the marked copy. Let me
8 pull that out. I can find it. Here it is. So
9 now I'm looking at page 12. And the third,
10 fourth, fifth lines down. "Testing" -- "test,
11 manufacturing, inventory, shipping records tend to
12 be kept for a shorter period per schedule times to
13 when the product would be in the marketplace,
14 generally about six years."

15 Q. Okay. So that's not quite shelf life,
16 then. That's something longer than shelf life?

17 A. Once again, I -- I'm not an expert in
18 interpreting what shelf life is or how long the
19 product would be in the marketplace. I'm just --
20 I basically tried to gather that information from
21 Mr. Hicks as best as I could.

22 Q. If you look at page 37 of your notes.

23 A. Yes.

24 Q. And this was from your discussion with
25 Rosina Bruno-Sheerin.

1 A. Yes.

2 Q. Well, first of all, before I get there,
3 and I apologize. Don Hicks, those records --
4 testing, manufacturing -- what kind of testing are
5 we talking about and where?

6 A. I interpreted his comment to be those
7 testing records that accompany batches or lots in
8 the manufacturing process, such as certificates of
9 analysis.

10 Q. And those certificates of analysis, were
11 those something that were being generated by
12 Johnson & Johnson or that came with the talc that
13 came in?

14 MR. COX: Object to the form.

15 BY MR. SWANSON:

16 Q. Let me -- let me start that over again.
17 What was included in the certificate of analysis?
18 Did that include whether or not -- was there --
19 did that include a test for asbestos?

20 A. I'm not an expert on the testing process.
21 I have a general understanding that there were --
22 there was testing done for asbestos. The best
23 summary of the testing records I have is from Mark
24 Zappa on page 19.

25 Q. But specifically what were they testing?

1 Now, Don Hicks was at the North Brunswick
2 location, the manufacturing location; is that
3 right?

4 A. I know he had various responsibilities.
5 He was at one point in North Brunswick. I really
6 don't know. I think he was at various locations.
7 But he had -- you know, in the -- during the
8 2000s, he had a responsibility for quality issues
9 related to talc manufacturing.

10 Q. So the records he was referring -- those
11 testing records, you think it includes
12 certificates of analysis?

13 A. Well, this is where I come to the
14 follow-on conversation with Mr. Zappa on page 19.

15 Q. Okay. You said 19?

16 A. Yes.

17 Q. All right.

18 A. And this is under "follow-up."

19 Q. Got it.

20 A. And in this conversation, I sought to
21 determine the flow of documentation through the --
22 through the life cycle so that there is testing
23 done at the mine level. There is testing done
24 when the -- when the material goes to Imerys,
25 there is a -- the certificate of analysis is

1 transferred. There is testing that is done by
2 Imerys itself. And then another C of A is
3 created. I mean, I'm just basically reading from
4 it. But then from Imerys to Pharma Tech, there
5 are C of As sent and then additional testing done.

6 Q. Okay.

7 A. So there's -- that's kind of the flow of
8 testing documentation.

9 Q. And so the mine -- and that would be prior
10 to -- well, that would be the Vermont mines;
11 right?

12 MR. COX: Object to the form.

13 THE WITNESS: Yeah. Once again, I mean,
14 I'm not...

15 MR. CARPENTER: I'll join in that last
16 objection. Also state lacks foundation.

17 BY MR. SWANSON:

18 Q. I'm sorry?

19 A. Yeah, I'm just going to say, I'm not an
20 expert on which mines were in use at which point.

21 Q. So this certificate -- now, the mine did
22 its own testing. It says that; right?

23 Now, Johnson & Johnson would get that
24 certificate of analysis regarding that testing; is
25 that right?

1 A. Well --

2 MR. COX: Object to the form. Beyond the
3 scope of the notice.

4 Go ahead.

5 THE WITNESS: Just going through the
6 workflow that Mr. Zappa established, the mine
7 would create a C of A which then is forwarded.

8 BY MR. SWANSON:

9 Q. Let me try to cut to the chase on this
10 stuff.

11 Is it true that you don't know
12 specifically whether these tests that are
13 reflected there were tests for asbestos content?

14 A. My general understanding is that the --
15 the tests did involve asbestos testing. The
16 appearance and odor and fineness testing may not
17 have included asbestos testing, but the -- my
18 general understanding -- and once again, I'm not
19 here to speak on anything but my general
20 understanding of the testing process, but those --
21 those initial tests did include asbestos testing.

22 Q. And what was the retention on those; do
23 you know?

24 A. Well, that goes back to -- to Mr. Hicks's
25 comment to the applicable items in the retention

1 schedule. But it's going to be associated with
2 the batch and lot six to seven years, and then
3 there would also be a notation on that in the
4 supplier agreement with PTI as to the retention
5 period there.

6 Q. Now, if you go to page 37 -- this is
7 Rosina Bruno-Sheerin.

8 Do you see that?

9 A. Yes.

10 Q. The second page of the notes about what
11 she told you. It refers to R&D records being kept
12 long-term.

13 Do you see that?

14 A. Yes.

15 Q. "Permanent or life of the product plus N
16 years"?

17 A. Yes.

18 Q. What does "life of product" mean in that
19 context?

20 A. It would appear she was talking about how
21 long the product was being made.

22 MR. SWANSON: I'm sorry, can I have that
23 read back, please.

24 (Record read by the court reporter.)

25 BY MR. SWANSON:

1 Q. So if she's referring to how long the
2 product is being made, in other words, like
3 Johnson's Baby Powder?

4 A. Yes.

5 Q. Not shelf life or anything like that;
6 right?

7 A. Well, based on her comment about
8 "permanent," I would say no.

9 Q. So but in the context of the retention
10 schedule we looked at, we were -- we saw life of
11 product plus 6, correct, for testing, that the
12 manufacturing material analyst -- analysis
13 reports?

14 Do you see that?

15 A. Yes, I did. That's on 190.

16 Q. So wouldn't that indicate that -- that
17 what Don Hicks told you, doesn't that indicate
18 they weren't at that facility following the
19 retention policy, he said, shelf life plus
20 6 years, that's what that meant?

21 MR. COX: Object -- object to the form of
22 the question.

23 THE WITNESS: Well, I believe you had
24 guided me to the material analysis reports, that
25 section, and I don't know -- I don't know enough

1 about what material analysis reports are to
2 determine if they are associated with a batch or
3 if there's some other type of -- I mean, I'm
4 reading the text below it, and I see that they --
5 they talk about DMR and DHR; device master record,
6 device history record. Based on that, I'm not
7 sure that this section applies to lots of batches.
8 I just don't know what material analysis reports
9 are.

10 BY MR. SWANSON:

11 Q. Right. So, I mean, this kind of runs up
12 against the problem I raised earlier, which is
13 that you're here to speak on behalf of Johnson &
14 Johnson. I'm trying to get this information from
15 you and it seems to me like we're kind of guessing
16 about what the proper retention schedule was. I
17 mean, if Don Hicks told you it was shelf life plus
18 6 years in manufacturing but it was actually
19 something different and required to be different,
20 that's something we want to know about, and I
21 can't get from you what the formal policies were
22 with respect to retention of testing results
23 and -- and not only testing results but the
24 testing documents themselves: things like TEM
25 images, x-ray diffraction, EDSS, that sort of

1 thing.

2 So who is it we should be talking to, to
3 get this information about what Johnson &
4 Johnson's policies are and have been with respect
5 to retention of testing records?

6 MR. COX: Object to the form of the
7 question. Object to the extent that this line of
8 questioning goes beyond the scope of the notice
9 insofar as you're asking Mr. Mittenthal to give
10 testimony about testing. He's not the corporate
11 representative regarding different types of
12 testing that was done by Johnson & Johnson or
13 Johnson & Johnson Consumer, Inc.

14 MR. SWANSON: Counsel, what I'm trying to
15 get at is -- I'm trying to get at what the
16 retention schedules were and how long documents
17 were supposed to be kept and whether or not there
18 was an actual retention schedule as to any kind of
19 testing reports to do with talc or milled talc,
20 finished cosmetic talc products. And that's what
21 is at issue in this case.

22 BY MR. SWANSON:

23 Q. And so, Mr. Mittenthal, let me ask you
24 again, who is it that I should be talking to, to
25 find this out?

1 A. Well, I learned it from Don Hicks and from
2 others in my notes. I did not go out and take
3 every interval described by Mr. Hicks and tie it
4 back to every version of a retention schedule.
5 I -- it would certainly be something that could be
6 done. I did not do that step as part of my
7 preparation. I did not view it as within my scope
8 of preparation. There -- the -- I would expect
9 that the retention schedules would be reflective
10 of the comments that Mr. Hicks and others made to
11 me.

12 MR. SWANSON: Move to strike that last
13 sentence as being speculative.

14 BY MR. SWANSON:

15 Q. Does Johnson & Johnson have a formal
16 retention policy as to retention of talc? And
17 when I say "talc," I mean milled and talc ore
18 testing results today?

19 A. Yes. My understanding is that it does,
20 and I would look to the schedules, I would look to
21 the supplier agreements to determine that.

22 Q. But you can't tell us what those retention
23 periods are; correct?

24 A. Well, we were looking at the '97 schedule.
25 I believe I can find it in the quality agreement.

1 Q. Okay. And where -- can you point me to
2 the quality agreement?

3 A. So this is Exhibit 1. The quality
4 agreements are provided under Tab 2D.

5 So I have -- on the first quality system,
6 there's two different sets of numbers. The top
7 says "9 of 16"; the lower one says "11 of 19."

8 Q. Can you direct me to where you're at
9 specifically?

10 A. Yeah.

11 Q. This is 2D, Exhibit 2D?

12 A. Yes. 2D. That's right. And it's the --

13 MR. COX: How many pages?

14 THE WITNESS: Well, it appears to be nine
15 pages in.

16 BY MR. SWANSON:

17 Q. These are --

18 A. I don't know why there's two sets of page
19 numbers, but there's...

20 Q. Is this under "validation"?

21 A. I'm looking under 17.0, that section
22 called "records."

23 Q. Oh, is this -- oh, yours aren't tabbed
24 that way.

25 Sorry, did you say "inspection measures

1 and tests"?

2 A. 17.0. "Records." Under the first quality
3 system procedure which is Exhibit 2D.

4 Q. Okay. I think I've got it. Yeah.

5 So what does that say about retention of
6 testing results?

7 A. It says, "All documentation, including
8 manufacturing records, packaging records,
9 inspection records, QA records, batch tickets,
10 cards records, et cetera, during the manufacturing
11 process shall be maintained by PTI for six years
12 from the date of manufacture."

13 Then it goes on to say, "The validation
14 records are to be kept by PTI as long as the
15 product is manufactured until the last batch of
16 any discontinued product has expired."

17 Q. Just to be clear for the record, Pharma
18 Tech Industries, PTI, was -- did the packaging of
19 the manufacturing powder -- packaging of Johnson's
20 Baby Powder for Johnson & Johnson; is that right?

21 A. That's my understanding.

22 Q. And where it says "records," and it says
23 "six years," I notice "manufacturing records,
24 packaging." Does it list testing?

25 A. It doesn't say testing per se, but it

1 speaks of testing in the sections that describe
2 documentation prior to that. Sections 8, 9, 10.

3 Q. So PTI --

4 A. 13.

5 Q. I'm sorry. PTI started manufacturing in
6 2004 or '5, around there; right?

7 A. I need to check my notes on that.

8 So I show that in 2004 was the sale of the
9 Royston plant to PTI.

10 Q. And do you know what the records retention
11 was for Royston prior to that, if it had one?

12 A. Once again, I would be looking through
13 these schedules to make that determination.

14 Q. Do you have a table of contents?

15 A. I'm going to see if there's a schedule
16 closer to -- I'm sorry. Is that -- is this my
17 pile here or that's? Not my pile.

18 Q. Any of those are ones you can -- those are
19 all marked as exhibits, so.

20 A. Okay. So I found one in my pile that's
21 2002. So that would be closer to the sale to PTI.

22 Q. And what is that marked as? What's the
23 exhibit number, I mean? Exhibit number?

24 A. Oh, I'm sorry. It's 12.

25 Q. Thank you.

1 A. And I do note that there are additional
2 definitions at the bottom of the schedule.

3 Q. Okay. And you're looking at a 2002
4 records retention schedule of Johnson & Johnson
5 Consumer and Personal Care companies; correct?

6 A. Yes.

7 Q. And is there something in here -- I had
8 asked you about Royston or whoever was doing the
9 manufacturing prior to PTI, but is there something
10 in this record schedule from 2002 that you see
11 with respect to a retention policy and testing of
12 talc finished product or talc ore or milled talc?

13 A. I'm looking for it. It's --

14 Q. Did you find anything?

15 A. I mean, this is also -- half the pages are
16 flipped, so I'm -- I would expect that there
17 should be a section in here that would relate to
18 batch record retention. I'm not finding it right
19 now. I could continue to search on the break.

20 Q. Okay. Batch record retention. I'm
21 specifically asking about any kind of testing of
22 the finished product and of the talc that went
23 into the finished product. So that could be a
24 research and development document of the research
25 department or it could be the manufacturing

1 department.

2 You understand that; right?

3 A. Yes.

4 Q. Okay. So that's what you're looking for.

5 A. Well, once again, I can try to match up
6 the comments from Mr. Hicks and others to specific
7 provisions of the schedule. I certainly would not
8 say I'm qualified without exception to determine
9 every place in the retention schedule that's
10 responsive to that question. I can -- I can look
11 for the word "testing" and make those
12 determinations, but I can't speak to an
13 interpretation of every category of the schedule.

14 MR. SWANSON: Move to strike as
15 nonresponsive.

16 BY MR. SWANSON:

17 Q. Okay. So whatever information that you
18 have about the retention of testing reports or
19 things associated with testing is in your notes;
20 is that what you're saying?

21 MR. COX: Object to the form.

22 THE WITNESS: My notes would be the
23 primary source of my knowledge of that
24 information.

25 BY MR. SWANSON:

1 Q. Do you know what the retention was on
2 transmission electron microscopy grids that were
3 created in testing Johnson's Baby Powder or in the
4 talc ore or milled talc for asbestos content at
5 any time?

6 MR. COX: Object to the form.

7 THE WITNESS: No, I don't know that.

8 BY MR. SWANSON:

9 Q. Do you know what the retention was on
10 transmission electron microscopy images of testing
11 of talc ore, milled talc, or cosmetic talc
12 finished product at any time by Johnson & Johnson?

13 MR. COX: Object to the form.

14 THE WITNESS: Unless those have other
15 common terms that I'm familiar with, I don't --
16 I'm not familiar with those terms.

17 BY MR. SWANSON:

18 Q. Do you know the retention schedule for
19 those?

20 A. I'm not familiar with those -- those --
21 those categories, so I would not --

22 Q. They would be images taken from testing --
23 photomicrographs from testing. They might be
24 included in a testing report.

25 A. Would they be associated with

1 manufacturing? Would they be associated with
2 audits? Would they be associated with other steps
3 of the process? I would -- if -- if, for
4 instance, they were associated with the
5 manufacturing process, Mr. Hicks has an answer for
6 that, that I elicited. If they are associated
7 with audits, there was an answer for that, that I
8 elicited.

9 Q. What testing was done -- what do you mean
10 by "audits" in -- with respect to testing of talc
11 for the presence of asbestos?

12 A. My understanding is that a third party, RJ
13 Lee and potentially other organizations, was
14 contracted to perform quarterly testing of talc.
15 That would have included a range of testing
16 activities. That would have been -- those test
17 results would have been captured and saved
18 separate and apart from any ongoing manufacturing
19 process and preserved.

20 Q. Okay. And where is that information
21 either in the -- in the retention policy, if you
22 know?

23 A. Yeah. As I did note, just flipping
24 through it, there were some categories called
25 "audits," but I have not undertaken to tie

1 Mr. Hicks or Mr. Zappa or other people's comments
2 to specific sections of the schedule.

3 Q. Now, with respect to your notes, who did
4 you speak to regarding the testing that was done
5 by outside laboratories, what you called "audit
6 testing"?

7 A. I did speak to Mr. Hicks about that. I
8 spoke to members of the supplier quality team.
9 That included -- get my table of contents.

10 So amongst the people I spoke to in that
11 regard were David Allen, Don Hicks, Lisa Kaiser,
12 Mark Zappa, Nicholas Zhu, Pankaj Verma, and Sean
13 Park. Lorena Telofski may have mentioned it as
14 well. I would then look through those people's
15 notes to see who specifically referenced it. But
16 those were the -- those were the people in the
17 supplier quality area that I spoke to.

18 Q. And what was -- was there a formal --
19 did -- well, let me start this way: When was
20 the -- from what you gathered, first of all,
21 generally speaking, what was your understanding of
22 Johnson & Johnson's retention policies on talc
23 testing by third parties that were hired by
24 Johnson & Johnson to do these quarterly tests or
25 audits?

1 A. My understanding is that those were
2 considered part of a system of record. They were
3 stored in a system called "TrackWise" and also in
4 a system called "Microsoft SharePoint" and subject
5 to indefinite retention.

6 Q. And where is that in your notes?

7 A. Well, there is a -- there were pieces of
8 it in different parts of my notes.

9 So, for instance, the RJ Lee testing was
10 on page 14 of my Don Hicks discussion.

11 Q. Okay. Are you talking about this
12 quarterly global testing in 2009?

13 A. Yes.

14 Q. Okay.

15 A. Then on page --

16 Q. Hold on a second, since we're talking
17 about that. So it says here that "start tested
18 quarterly global testing 2009" -- "started
19 quarterly" testing in 2009. And then in
20 parentheses, "also tested at an earlier time."

21 And it said that Don requested 500-gram
22 samples from every manufacturing site.

23 And this you understand to be as of 2009?

24 MR. COX: Object to the form.

25 THE WITNESS: The -- the context was for

1 the quarterly global testing, yes.

2 BY MR. SWANSON:

3 Q. And then it says -- then he sent to RJ
4 Lee. "Did not retain anything."

5 You mean Don Hicks didn't retain anything;
6 is that what that means?

7 A. Correct.

8 Q. And what did you ask him that elicited
9 that answer that he didn't retain anything? What
10 was that in reference to? That he didn't have a
11 record of it?

12 A. No, not the records. It was whether he
13 maintained any elements of the samples themselves.

14 Q. And what did he do with whatever remainder
15 of the sample that he didn't send to RJ Lee?

16 MR. COX: Object to the form.
17 Mischaracterizes the testimony just given.

18 THE WITNESS: My understanding is that he
19 requested 500-gram samples and he sent them along
20 500-gram samples to RJ Lee.

21 BY MR. SWANSON:

22 Q. What's the next reference you were
23 referring to in terms of this quarterly testing,
24 because this doesn't say anything about how long
25 the testing results or the documents about the

1 testing should be retained; correct?

2 A. Correct.

3 Q. Where is the next one?

4 A. Page 18, which is the Mark Zappa
5 discussion and that is about -- about 18 lines
6 from the bottom.

7 Q. I'm sorry. Where?

8 A. 18 lines from the bottom of page 18.

9 Q. And what are you looking at?

10 A. "Quarterly mine results also scanned into
11 SharePoint. Dedicated talc SharePoint site
12 includes testing. Don kept records in physical
13 binder until he left and then it was migrated to
14 SharePoint until 2014. No additional steps needed
15 to conform to legal hold. Already hold
16 everything."

17 Then it notes the mine assessment may
18 routinely come through email, and the -- also
19 notes that the supplier tests were managed in the
20 TrackWise system.

21 Q. It says that this -- well, first of all,
22 Don kept records in a physical binder.

23 Do you have any idea how far back those
24 records went, without guessing?

25 A. I can only note that he -- his involvement

1 with manufacturing quality started in 2001.

2 Q. Don Hicks' did?

3 A. Yes.

4 Q. And do you know whether or not that
5 binder -- do you know if that binder contained the
6 testing results? It just says "kept records." I
7 know there's some discussion about testing, but
8 I'm trying to figure out if Don kept records in
9 physical binders, what specific records was he
10 keeping in a physical binder?

11 A. I interpreted that, the conversation, to
12 be regarding the testing results, the quarterly
13 test results. That was my understanding.

14 Q. And did you ask -- I mean, I'm looking at
15 your notes here of Hicks and Zappa, and when you
16 were asking people who were responsible for
17 records and information management, you were
18 asking all about hold periods, holds and retention
19 periods, and the policies from what we've seen in
20 the notes. But I see here -- I don't see you
21 asking either of these people, Mark or Don, why --
22 or what their understanding was of the retention
23 schedule or any holds at the time.

24 In other words, did you ask them, well,
25 what was the policy -- what was the -- what was

1 the company policy on holds? What policy were you
2 following on retention schedules for any of these
3 records that you were generating or receiving?

4 MR. COX: Object to the form of the
5 question.

6 THE WITNESS: Well, I would disagree in
7 part in the sense that in the page 18 discussion
8 with Mr. Zappa, he indicated no additional steps
9 needed to conform to legal hold. They were
10 already holding everything going forward.

11 BY MR. SWANSON:

12 Q. Well, specifically what did you ask him
13 about? What did he say other than -- what did you
14 ask about legal holds?

15 A. I asked if the system had any provision or
16 capability to enable a legal hold of those
17 materials.

18 Q. And those materials, again, you're talking
19 about these quarterly testing results; is that
20 right?

21 A. Yes.

22 Q. So -- and that -- what happened to the
23 physical binder that Don had?

24 A. I don't know.

25 Q. Was it destroyed?

1 MR. COX: Object as asked and answered.

2 THE WITNESS: I don't know.

3 BY MR. SWANSON:

4 Q. And because Mark started in 2006 and you
5 didn't specifically ask Don that, you don't know
6 if his binder included quarterly testing results
7 going all the way back to 2001, do you?

8 A. I did not ask the date range of the
9 binder.

10 Q. What other reference do you have about --
11 in your notes regarding retention periods -- or
12 let's add holds to this -- for quarterly testing?
13 And if you see anything in there on any other type
14 of asbestos testing of the talc or the finished
15 talc products, I want to know about it -- that we
16 haven't discussed already.

17 A. Well, the next --

18 MR. COX: Objection to form.

19 Go ahead.

20 THE WITNESS: I'm sorry.

21 The next place this is referenced is in
22 the Nicholas Zhu section on page 20.

23 MR. SWANSON: Before you get into that,
24 hold that thought.

25 Let's go off the record so that the

1 digital media can be changed on the video
2 recorder.

3 THE VIDEOGRAPHER: Thank you.

4 This marks the end of Media Disk 3 in the
5 deposition of James Mittenthal.

6 We are going off the record at 2:55 p.m.

7 (Off the record.)

8 THE VIDEOGRAPHER: We are on the record at
9 3:12 p.m.

10 This marks the start of Media Number 4 in
11 the deposition of James Mittenthal.

12 Counsel, you may continue.

13 BY MR. SWANSON:

14 Q. Mr. Mittenthal, I think we were going
15 through -- we were talking about quarterly reports
16 and also other testing of the talc or finished
17 product for the presence of asbestos and the
18 retention periods or practices related to those.
19 And I think we had sort of exhausted what you
20 could say about the policies. But as to your
21 notes, were there other references in your notes
22 that you had in mind that are the basis of your
23 understanding?

24 A. Yes. So in the previous conversation, I
25 was simply walking through places in my notes

1 where quarterly audit testing or RJ Lee testing
2 had been captured, and the next place I had come
3 to was Nicholas Zhu, which is page 20.

4 So there are sections that talk about
5 batch records and mining and processing. Then it
6 goes down to about eight, nine lines from the
7 bottom, "quarterly testing third-party RJ Lee
8 cites in India, China, Thailand sent talc samples
9 to RJ Lee. Test results stored in SharePoint and
10 shared with manufacturing sites via email. Global
11 SharePoint site with folder dedicated to APAC
12 source quality team may have test results back to
13 2012."

14 Q. So that would correspond to the six years,
15 is that right, that we saw with Don Hicks? From
16 memory he was talking about six years.

17 A. I would actually suggest that Mr. Hicks
18 was talking about batch retention as opposed to
19 quarterly testing retention.

20 Q. Okay. He was talking about -- but he was
21 talking about testing, batch testing; correct?

22 A. Among other things, certificates of
23 analysis and other things associated with the
24 batch or a lot.

25 Q. And that would include testing of

1 asbestos?

2 A. Testing, yes.

3 Q. In here, what -- to be clear, Nicholas
4 Zhu, he's a supply -- is in supplier quality
5 management.

6 Does he work in China?

7 A. Yes.

8 Q. And did you speak to him on the phone?

9 A. Yes.

10 Q. And he's been there at Johnson & Johnson
11 China for five years; is that right?

12 A. Yes.

13 Q. And his understanding is that these
14 quarterly test results go back to 2012?

15 A. Yes.

16 Q. And do you have any other information as
17 to how far back -- well, do you know if they've
18 only been retained for that five or six-year
19 period or, in other words, there were prior
20 results and they had been retained six years, or
21 they've only been doing that testing back to 2012?

22 A. Yeah. I simply note that he said, you
23 know, don't believe they have anything prior to
24 that.

25 Q. Okay. So that doesn't answer the question

1 in the sense that we don't know the answer to that
2 question from what you learned from him, correct,
3 as to whether or not they only retained it for six
4 years or they didn't start this practice of
5 testing -- quarterly testing until 2012; true?

6 A. True. I just want to go back to my Don
7 Hicks notes for a quick second just to make sure
8 I'm answering that fully.

9 Okay. I checked. And I agree.

10 Q. Okay. Are there any other references that
11 you have to testing of the talc or the finished
12 product in terms of records retention?

13 A. Well, as I mentioned, the walk-through
14 that was encompassed before the break and now it
15 was -- I was really just looking for instances of
16 audit testing and how that was retained. I could
17 do another sweep just for any references to
18 retention of batches. I was -- I was really
19 focusing on looking -- looking for the retention
20 of quarterly audit. I may -- I may have found
21 additional places where there's batch information,
22 but I was -- I had been looking for the RJ Lee
23 quarterly audit information while we were looking
24 for it.

25 Q. On the break?

1 A. No. While we were going through this
2 exercise, I was focusing on the quarterly audits.

3 Q. And what I asked the last couple of
4 questions was go ahead and expand that. I mean,
5 initially we started with Don Hicks and some of
6 the testing that had been related to
7 manufacturing; right?

8 And so, since we're taking the time to go
9 through your notes on this, I'm interested in all
10 references to retention of testing records that
11 would involve testing for asbestos, whether that's
12 testing at the manufacturing facility or the
13 quarterly.

14 A. Uh-huh.

15 Q. Okay?

16 A. Okay.

17 Q. All right. So --

18 A. So the next one was Pankaj Verma, page 21.

19 Q. Okay.

20 A. And he indicated that "audit reports were
21 stored in TrackWise, a validated system." And his
22 comments about a validated system I understood
23 that to mean, among other things, that the -- that
24 this was a system of record and that the
25 information would be stored indefinitely in that

1 system.

2 And that TrackWise was, in fact, a global
3 system, meaning information that he input or that
4 happened in his region would be visible anywhere
5 around the world.

6 He --

7 Q. This is -- okay. So let's just back up
8 for a second there now.

9 Mr. Verma is director of APAC external
10 manufacturing quality; right?

11 A. Yes.

12 Q. And he's been working there for seven
13 years at J&J.

14 Does that mean including four years at J&J
15 India Mumbai?

16 A. You know, it's ambiguous because he then
17 says he was responsible for management and mining
18 for the last ten years. I'd have to double-check
19 that.

20 Q. You said that this audit reports -- now,
21 how do you know that those audit reports that are
22 being referred to there are auditing actual
23 testing -- testing results, testing talc for
24 asbestos?

25 A. The -- up above where it says "raw and

1 packaging materials suppliers, talc part of his
2 portfolio" then below that "audit of talc
3 manufacturing site ensuring that talc supplier
4 follows specs, testing, and overall global specs."

5 Q. So but there's a number of things in
6 there. So following specs. What was the talc
7 supplier for -- which talc supplier are we talking
8 about now? Do you know? Is it China?

9 A. Well, it appeared from the conversation he
10 was referring to both India and China.

11 Q. Okay. And you said that the audit reports
12 are stored in TrackWise. Is there -- you said
13 that you thought that that was -- well, strike
14 that.

15 How far back do these audit reports go?
16 Do you know?

17 A. I do not.

18 Q. And how long have they been stored in
19 TrackWise? For how many years?

20 A. I'm going to look at my -- if I can find
21 it quickly, my spreadsheet. I might need some
22 help.

23 Q. Well, it says right here -- maybe this
24 helps you -- "audit reports stored in TrackWise, a
25 validated system. Prior to that, ETQ Symphony,

1 including corrective actions, 2014." That's in
2 your notes on this same page.

3 A. Yes. For that region. I was looking --
4 okay. I wanted to see TrackWise in general. But,
5 yes, for that region it is in my notes.

6 Q. Right. So for that region, the
7 information wasn't being entered into TrackWise
8 until 2014; right?

9 A. Yes.

10 Q. And it came -- and it transferred over
11 from a different system? Well, let me ask you
12 what that reference means. "...a validated
13 system. Prior to that, ETQ Symphony, including
14 corrective actions." What does that mean?

15 A. So the first line, "Audit report stored in
16 TrackWise, a validated system," that stands on its
17 own.

18 And then the system prior to that for
19 storing audit reports was ETQ Symphony, and that
20 system also happened to store corrective actions.

21 Q. And do you know if that information was
22 transferred over that was in ETQ?

23 A. It doesn't say explicitly in here.

24 Q. Was the switch to TrackWise in 2014?

25 A. That's my understanding. I also wanted to

1 find my -- I don't see my -- is there something I
2 can lay my hands on? The list of -- is that one
3 of the exhibits floating around the table
4 possibly?

5 Q. I'm sorry. What are you looking for?

6 A. Sort of a Jim Mittenenthal set of lists. I
7 think it might be in one of those maybe.

8 Q. I think -- it's got to be in like
9 Exhibit 2?

10 A. No. It's like the three tables of the
11 applications, the timeline, and the names.

12 Q. Talking about this?

13 A. Well, that would have been the most recent
14 edition to it.

15 Q. This?

16 A. No. There's one more.

17 Q. I can't guess about what you... sorry.

18 A. I thought it had been marked.

19 Q. It probably has been. I think we marked
20 pretty much everything.

21 Describe what that document is that you're
22 looking for.

23 A. It's about a -- well, it's -- would be
24 printed on both sides. It's about a four or
25 five-page total, and it has a table that has a

1 timeline, it has a table that has a list of
2 applications, and a table that has a list of
3 people.

4 Q. I'm sorry. I'm not -- it's not ringing a
5 bell right now.

6 A. Okay. This is the document (indicating).

7 Q. Oh. I guess it's a document I haven't
8 seen yet. Or have I? Okay.

9 MR. COX: I think you have. It was part
10 of his notes.

11 MR. SWANSON: Yeah. Okay.

12 BY MR. SWANSON:

13 Q. This is a list of people that you
14 interviewed; right?

15 A. That's part of the list, yeah.

16 MR. SWANSON: Chris, was this in the
17 binder? This (indicating)? I just want to figure
18 out if we marked it or not.

19 MR. COX: No. He had it with him on the
20 first day, though. I don't know if you marked it
21 or not.

22 MR. SWANSON: I might not have.

23 MR. COX: There were a couple of things
24 that were not marked.

25 MR. SWANSON: Let's go ahead and mark

1 that.

2 Mr. Mittenthal, so we that we've got a
3 copy of it and so we just have a record of what
4 you're looking at there.

5 That's going to be Exhibit 31.

6 (Whereupon, Plaintiff's Exhibit 31 was
7 marked for identification.)

8 BY MR. SWANSON:

9 Q. Just for the record, can you tell me what
10 Exhibit 31 is?

11 A. Yes. It's three lists, and they are lists
12 that I compiled going through my notes. The first
13 part of the lists are just simply the people I
14 spoke to. The second part of the lists were the
15 applications that were discussed. And the third
16 part of the lists were dates mentioned by people
17 that I spoke to.

18 And I have gone to the second area of the
19 list, the applications discussed, in order to
20 ascertain information about TrackWise. And I just
21 have a general note that it was effective in 2014
22 and preceded by ETQ.

23 Q. Okay. All right. Let's see. We were on
24 page, I think it was 21?

25 A. Yes.

1 Q. And I apologize if I asked a question I've
2 already asked.

3 How far back did those talc testing audit
4 reports go?

5 A. I don't know.

6 Q. Okay. What's the next -- and you don't
7 know if this policy and practice or practice that
8 was happening for the last several years as to, I
9 think India and Thailand, were also practiced in
10 the Philippines or Hong Kong, do you?

11 A. Just the first part of the sentence again,
12 please?

13 Q. Do you know if this practice with respect
14 to these audit reports and currently putting them
15 in TrackWise and prior to that into ETQ Symphony,
16 do you know if that was -- if that applied to the
17 Philippines or Hong Kong?

18 A. Well, in the earlier conversation,
19 Mr. Nicholas Zhu identified himself as responsible
20 for the Philippines and noted that the use of --
21 noted the SharePoint site.

22 Q. Didn't we talk about that?

23 A. Yes.

24 Q. All right. As to talc -- are there any
25 other references that you have into retention

1 of -- retention policies or practices that you
2 know about that we haven't discussed already?

3 A. Well, in the -- further on in the section
4 about Pankaj Verma, which is page 21, there is a
5 notation, "expect a defined period of retention
6 for suppliers. Typically shelf life plus one
7 year."

8 So there is a general statement about
9 document retention that once again echos the
10 "expected shelf life plus one year" notion.

11 Q. So that's the six years basically; right?

12 A. Yes.

13 Q. And that would include testing?

14 A. Yes.

15 MR. COX: Object to the form.

16 BY MR. SWANSON:

17 Q. And here's another reference, and I think
18 this is consistent with what you just said. If
19 you go to page 61, 62. This is as to Pam Downs.

20 A. Yes.

21 Q. And Pam Downs is the person you've had the
22 most discussions with overall about Johnson &
23 Johnson's record searches and production and that
24 sort of thing other than perhaps the attorneys;
25 correct?

1 A. I would generally agree.

2 Q. And she's the principal at Triality which
3 is a company that works for Johnson & Johnson
4 dealing with their document searches and
5 productions on various levels; correct?

6 A. Yes. Evidence management.

7 Q. Evidence management. Okay.

8 If you look at what she said here on
9 page 62, near the top of the page it says, "Some
10 testing records maintained by third parties," and
11 then it says, "evaluate testing quarterly."

12 I don't know, do you know what that meant,
13 "evaluate testing quarterly" meant, when you spoke
14 to her initially then back in April of 2018?

15 A. Yeah. It's kind of mashed together. But
16 I would say "evaluate the talc by testing
17 quarterly" would be a more complete version of the
18 sentence.

19 Q. And then she also says retention of
20 testing docs was generally shelf life, a product
21 plus one year; correct?

22 A. Yes.

23 Q. So, again, that's -- then the shelf life
24 of the product is considered to be five years for
25 Johnson's Baby Powder; true?

1 MR. COX: Object to the form.

2 THE WITNESS: I would conclude that. I
3 wouldn't be able to speak on it with authority,
4 but that sounds in the range based on what Don
5 Hicks said as well as these other comments.

6 BY MR. SWANSON:

7 Q. So generally it seems like people are
8 saying it's shelf life, which is about five years,
9 plus a year for the preservation of the testing
10 results except in these instances recently where
11 you've said that some of the information got put
12 into -- I forget what the name of the platform
13 was.

14 MR. COX: Object to the form.

15 THE WITNESS: Well, going back to
16 Mr. Hicks, he indicated that, I think it was
17 Mr. Hicks, if not Mr. Zappa, that RJ Lee started
18 testing in 2009 and that that quarterly testing
19 was kept.

20 BY MR. SWANSON:

21 Q. So prior to 2009, at least in practice,
22 even though we haven't really determined it from
23 you looking at the policies because you haven't
24 been able to quite straighten that out, although
25 there was a reference in a policy.

1 But in terms of what practices you've
2 gathered from interviewing these witnesses was
3 that it was generally about six years for testing
4 results.

5 MR. COX: Object to the form.

6 BY MR. SWANSON:

7 Q. For testing; correct?

8 A. I would seek to make a clean separation
9 between testing from -- that accompanies batches
10 or the manufacturing process as opposed to testing
11 that stands apart from -- from a particular batch
12 or a lot, and whereas Mr. Hicks indicated that
13 that regular quarterly audit started in 2009, he
14 also indicated that there were other testing that
15 was done separate and apart, from batches and
16 audits -- sorry -- separate and apart from batches
17 and lots that occurred prior to 2009.

18 So batch lot testing with its shelf
19 life-based retention here; quarterly audits and
20 prior to 2009 an occasional audit-like testing
21 over here (indicating).

22 Q. Now, when Pam Downs is talking about this,
23 retention of testing, she's talking about the
24 quarterly audits or is she talking about -- do you
25 know, or is she talking about testing done in

1 conjunction with manufacturing?

2 A. She's -- when she talks about shelf life
3 of a product plus one year, it's in connection
4 with manufacturing.

5 Q. Okay. Now, go to page -- before I leave
6 generally this area of testing for talc or
7 finished product for asbestos and the retention of
8 those records, do you have any other information
9 as the representative of Johnson & Johnson to add
10 as far as when specific retention practices or
11 policies came into place and how long the
12 retention periods were that we haven't spoken
13 about?

14 MR. COX: Object to the form.

15 THE WITNESS: When I spoke of the places
16 in my notes, and I believe we've captured many of
17 those places both for the quarterly audits and for
18 the manufacturing-related testing, there are
19 references in the retention schedules I -- I had
20 difficulty tying them one by one. But they're --
21 the retention schedule would specify those
22 applicable periods as well.

23 The supplier audits -- the external
24 supplier audit agreements -- or the external
25 supplier agreement also encompassed retention

1 periods in them as we went through. And I think,
2 as I mentioned when we first started talking about
3 this, the legal holds would also specify testing
4 as a category to be held.

5 BY MR. SWANSON:

6 Q. Now, on retention schedules, we talked
7 about 1997 being the first actual retention
8 schedule. And you couldn't really tell from
9 looking at that whether that applied to the talc
10 testing, correct, at least from the preliminary
11 look that you took a couple of hours ago when we
12 looked at that; right?

13 MR. COX: Object to the form.

14 THE WITNESS: My understanding is that
15 those schedules would cover those intervals. I
16 would just need further study to tie the specific
17 references made by Mr. Hicks, Ms. Downs, Mr. Zhu,
18 Mr. Zappa, Mr. Verma, and others back to their
19 accompanying periods in the schedules themselves.

20 BY MR. SWANSON:

21 Q. Do you have any information -- and I may
22 ask you that tomorrow, because I don't want to
23 continue your deposition indefinitely into the
24 future, and I'm sure you probably agree with me
25 there. So I may come back on that to see if we

1 can specifically locate those.

2 But setting that aside, do you have any
3 information that there was any kind of formal
4 retention policy as to testing -- now you've said
5 the first hold was in 1999; correct?

6 A. Yes.

7 Q. And the first policy we have for retention
8 is 1997; correct?

9 A. Yes.

10 Q. So do you have any information that there
11 was -- that Johnson & Johnson had a retention
12 schedule or retention hold prior to 1997 that
13 would dictate the retention of any kind of testing
14 of Johnson's Baby Powder, or cosmetic talc
15 products, or the talc ore, or the milled talc that
16 was used in those products for asbestos?

17 MR. COX: Object to the form.

18 THE WITNESS: Insofar as holds, I have no
19 knowledge of anything before that. Insofar as
20 retention schedules, I have information from the
21 company that there were retention schedules
22 created in the early '90s. The earliest one made
23 available to me has been 1997. It's my
24 understanding that the retention schedules are
25 intended to cover topics such as retention of

1 testing documentation.

2 I have not seen anything earlier to 1997.

3 I have just a general understanding that the --
4 the very purpose of the retention schedules is
5 to -- is to address the retention of materials
6 that would be classified in the company's business
7 operations which would include testing.

8 I haven't seen anything prior to 1997.

9 BY MR. SWANSON:

10 Q. Okay. And we had -- and I wish I could
11 remember who it was you spoke to -- and we spoke
12 at length about a retention policy that was
13 referred -- retention, some kind of retention
14 policy that was referred to in your notes as of
15 the early 1990s. Remember that? And it was
16 supposedly based on the McNeil subsidiary's
17 retention policy?

18 A. That was -- well, that was authored by
19 Rosina Sheerin. There may have been references to
20 it, both from her discussion and possibly Michelle
21 Anderson.

22 Q. And when I asked you about that at that
23 time, you told me you didn't know the particulars
24 of that retention policy.

25 Do you remember that?

1 A. That's right.

2 Q. And you still don't know the particulars
3 of the retention policy; true?

4 A. That's right.

5 Q. And Lorena, she didn't tell you that this
6 retention policy was for testing results of the
7 talc for asbestos, did she?

8 A. I believe you mean Rosina?

9 Q. Rosina, yes.

10 A. Correct.

11 Q. You mentioned earlier, before I started
12 asking you these questions, that you -- you had
13 that understanding that that policy would be.

14 Are you speculating those earlier -- the
15 earlier policy from the earlier 1990s?

16 A. I'm simply saying that the purpose of a
17 retention policy is to cover the documents that
18 the company uses in the course of its business.
19 I -- I haven't seen them. I don't know one way or
20 the other whether testing is on there. I have
21 seen the 1997 schedule, which makes reference to
22 some types of testing. I'm not able to interpret
23 every category of testing and what that means. I
24 just know I've seen testing in the '97 schedule.

25 Q. What I want to do tomorrow so that I

1 don't -- I think I've closed that out for now, and
2 I hate to give you homework, but before we start
3 tomorrow, if you could look at those retention
4 schedules so I can ask this question again because
5 I do want to get to the bottom of this, because
6 you're referring to 1997, and you weren't sure
7 when I asked you if those were really regarding
8 talc testing. So that if you could look at a more
9 recent policy or two in 1997 that would help us
10 and it wouldn't take us very long to get through
11 it at that point as opposed to us slogging through
12 it page by page.

13 Is that something you can do?

14 MR. COX: Hold on. First of all, we
15 object to the continuation of this deposition
16 beyond today, and we can talk about that more at a
17 break, Mark. But we can also talk about whether
18 Mr. Mittenthal can look at what you're asking him
19 to look at, at a break today.

20 MR. SWANSON: Sure.

21 BY MR. SWANSON:

22 Q. All right. I want you to look at page 24
23 of your notes, please.

24 A. I'm there.

25 Q. Now, prior to PTI doing the manufacturing

1 of the domestic Johnson's Baby Powder, it was done
2 by Royston, is that right, or did it go from -- is
3 that correct?

4 A. Well, my general understanding is that
5 Royston was the name of a company facility.

6 Q. And that was in Georgia?

7 A. Yes.

8 Q. And do you know if the Royston facility
9 had any retention policy with respect to any
10 testing that they did for certificates of analysis
11 on the presence of asbestos in the product or in
12 the talc that was coming in?

13 A. My understanding was that Royston would be
14 part of the company and would be subject to any
15 consumer -- consumer retention policies in place.

16 Q. And Royston did the manufacturing up until
17 2004 or '5 when it went to PTI; is that correct?

18 A. Well, Johnson & Johnson did the
19 manufacturing at its Royston facility. That's my
20 understanding.

21 Q. And do you know how far back that went,
22 that Royston did the manufacturing?

23 MR. COX: Objection. Beyond the scope of
24 the notice.

25 BY MR. SWANSON:

1 Q. Strike that.

2 But if we went from Royston, Johnson &
3 Johnson Royston to PTI in 2004 or '5, we talked
4 about that; right?

5 A. Yes.

6 Q. The question is, do you have any
7 information that at the Royston facility, the
8 manufacturing facility, there was a retention
9 policy as to any testing documents that were being
10 generated by them, or received by them, in other
11 words, generated during manufacturing or received
12 by them in terms of, like, talc supply that they
13 received?

14 A. My understanding is that those would have
15 been subject to the franchise level retention
16 policies that we discussed for which we have '97
17 and others, and also, where applicable, subject to
18 a legal hold within the appropriate time frames.

19 Q. Now, going back before Royston,
20 manufacturing was done at New Brunswick; correct?
21 North Brunswick, sorry.

22 A. Well, I certainly am not able to speak --

23 Q. This is at page 24. I understand. But
24 obviously -- I mean, we can both agree that you
25 have been hired to act as a representative for

1 Johnson & Johnson and you've done certain
2 research. And so, with that in mind, your notes
3 from your interview with Lorena Telofski at
4 page 24 of your notes indicates that the
5 manufacturing was done at North Brunswick?

6 MR. COX: Object.

7 BY MR. SWANSON:

8 Q. Correct?

9 MR. COX: Sorry. Object to the extent
10 you're seeking to elicit testimony from someone
11 who's not designated about topics as to where the
12 product was manufactured.

13 MR. SWANSON: These are document issues,
14 Chris. I'm just trying to get to document issues,
15 since that's what we're talking about.

16 MR. COX: That's not a document question.

17 THE WITNESS: She -- I asked her some
18 questions. This was part of her answer. I wrote
19 it down.

20 BY MR. SWANSON:

21 Q. Okay. So from that you understood that
22 the manufacturing went from North Brunswick to the
23 Royston plant; correct?

24 A. That's what she indicated.

25 Q. And some of the manufacturing was done by

1 Kolmar Laboratories in Port Jervis, New York;
2 correct?

3 MR. COX: Object to the form. Object to
4 the extent it's beyond the scope of the notice.

5 BY MR. SWANSON:

6 Q. From your notes.

7 A. That is in my notes.

8 Q. And that's all we've been talking about.

9 I mean, your understanding from what you learned
10 from talking to people. I understand you have
11 more expertise about documents and retention and
12 that sort of thing, but all this is information
13 that you've gained from talking to people; right?

14 A. Well, I wrote down the -- the -- what was
15 elicited during our conversation, so.

16 Q. So I want to get to the document issues,
17 though. You see that the -- the North Brunswick
18 plant closed down; correct? You see down there
19 where it says, "All buildings in North Brunswick
20 have been sold and taken down"?

21 A. Yes, I do.

22 Q. What happened to the records that were at
23 North Brunswick?

24 A. I don't have that information in my notes.

25 Q. Were they destroyed?

1 MR. COX: Objection. Asked and answered.

2 THE WITNESS: I don't know.

3 BY MR. SWANSON:

4 Q. Now, if you look -- Don -- your notes
5 regarding Don Hicks -- and kind of you could hold
6 on to that Lorena Telofski page 2. But if you
7 look at page 12.

8 A. Yes.

9 Q. You see about six lines down he says,
10 "Responsibility of maintaining records resides
11 with the site doing the work"?

12 A. Yes.

13 Q. Okay. So North Brunswick had the
14 responsibility for those records; correct?

15 A. I can only infer that from -- from
16 Mr. Hicks' comment. I don't know that as a fact,
17 but it could be inferred.

18 Q. Do you know what year that that happened,
19 that the North Brunswick buildings were taken
20 down?

21 A. No.

22 Q. Do you know -- from your notes I see that
23 they were doing testing at the manufacturing
24 facilities; correct?

25 MR. COX: Object to the form.

1 THE WITNESS: Can you cite me to a place
2 in my notes for that?

3 BY MR. SWANSON:

4 Q. I lost the cite, but I know that that was
5 done. Let me see if I can find it that they had
6 testing records.

7 I saw this at page 24 and I apologize.
8 I'm not...

9 Oh, you see at 24, it says -- you see the
10 reference to "PO, specs, test records, quality
11 SOPs," about two-thirds of the way down?

12 A. Yes.

13 Q. And that's -- those are records regarding
14 these facilities that were manufacturing; is that
15 right?

16 MR. COX: Object to the form.

17 BY MR. SWANSON:

18 Q. You see below that "testing both for
19 what's in it, what's not in it, purity, et
20 cetera"?

21 A. Absolutely. Although I'm not -- it's not
22 clear whether Ms. Telofski is talking about
23 Kolmar, North Brunswick, or Georgia in this -- in
24 this portion.

25 Q. But they are talking about manufacturing

1 plants having -- and it also says "certificate of
2 conformance and basic testing on inbound talc."
3 So they're receiving testing records and
4 generating their own at manufacturing facilities;
5 right?

6 A. That's my interpretation of her comment.

7 Q. Okay. And, as you sit here today, you
8 don't know what happened with those testing
9 records from North Brunswick, New Jersey plant
10 when that was -- when that manufacturing operation
11 was transferred, or when the buildings were taken
12 down; true?

13 A. Correct.

14 Q. And I think Mark Zappa at the bottom of
15 page 17, he said -- this is just sort of -- at
16 page 17, he says that the shipments of talc had to
17 have a certificate analysis of them that came in.
18 Let me see if I can find that.

19 You see the certificate of -- oh, it says,
20 "Certificate of analysis would include test for
21 asbestos."

22 MR. COX: Object to the form.

23 BY MR. SWANSON:

24 Q. Do you see that?

25 A. Yes, I do.

1 Q. From Lorena Telofski's notes, it would
2 appear that these manufacturing facilities
3 receiving testing records and generating their
4 own, that would have included the Kolmar facility,
5 too; correct?

6 MR. COX: Object to the form. Beyond the
7 scope of the notice. Other than what's in his
8 notes.

9 BY MR. SWANSON:

10 Q. Page 24.

11 A. Oh, thank you. I can't confirm that --
12 which facilities she's talking about, as I
13 mentioned, whether it's Kolmar, North Brunswick,
14 or Georgia, or all of them.

15 Q. And again, I understand that you're not
16 here as the PMQ on where all the manufacturing
17 sites were, but these are all records questions.
18 I'm just asking a foundational question here.

19 Do you know when Kolmar Laboratories
20 started and during what period of time it was
21 manufacturing Johnson's Baby Powder?

22 MR. COX: Objection. Beyond the scope of
23 the notice.

24 BY MR. SWANSON:

25 Q. And if you don't know, that's fine.

1 A. I don't know.

2 Q. Okay. And do you know whatever records it
3 had regarding certificates of analysis, testing
4 records for asbestos, manufacturing
5 specifications, those sorts of records, do you
6 know how they were archived at that facility?

7 A. I have a general comment from Ms. Telofski
8 that there was material put into, I believe it was
9 Iron Mountain, but I'm not sure which -- which
10 materials she is referring to.

11 Q. And where is that?

12 A. Looking on page 2. Let me see if I can
13 find it. Oh. She was talking about APRs, so I
14 know that some of records she referenced are in
15 Iron Mountain. I don't know which other ones
16 besides the APRs.

17 Q. APRs is authorization for product release?

18 A. Yes.

19 Q. That's not testing records, is it?

20 A. Not that I'm aware of.

21 Q. And it says it includes formula safety.

22 Do you know what plant that is applying to
23 or what plants?

24 A. Well, the discussion at that time was
25 about Skillman, but I don't know the scope of what

1 was stored in Iron Mountain under her
2 jurisdiction.

3 Q. Okay. So as to Kolmar, let me get back to
4 the question, do you know at the Kolmar
5 manufacturing packaging facility what they did
6 with respect to the retention and archiving of
7 records?

8 A. No.

9 Q. And do you know when that facility no
10 longer was manufacturing Johnson's Baby Powder,
11 what it did with whatever records it had?

12 A. No.

13 Q. Were those records destroyed?

14 MR. COX: Objection. Asked and answered.

15 THE WITNESS: I don't know.

16 BY MR. SWANSON:

17 Q. I touched on this earlier, but I want to
18 go into this just briefly: Do you have any
19 information regarding the Johnson & Johnson's
20 policies, if any, with respect to what are called
21 "grids" associated with transmission electron
22 microscopy testing?

23 MR. COX: Objection. Asked and answered.

24 THE WITNESS: I don't --

25 BY MR. SWANSON:

1 Q. I apologize if I asked. But --

2 A. I don't have information on grids.

3 Q. Do you have information with respect to
4 what the current retention schedule period is for
5 talc samples? And that would be talc ore, milled
6 talc, or baby powder samples that are tested?

7 A. My understanding is based on the legal
8 hold notice, which is -- which is -- specifies
9 that samples are to be retained.

10 Q. And the legal hold notice -- now, there's
11 been a sequence of legal hold notices going back
12 to 1999, correct, with respect to talc litigation?

13 A. Yes.

14 Q. Okay. And is it your understanding that
15 those -- that's essentially been continuously in
16 effect since 1999 with respect to anything that
17 was under that original hold?

18 A. I read each of the notices. They have
19 descriptions of subject matter. I've noted that
20 those subject matter descriptions have evolved
21 over time.

22 Q. Okay. But with respect to samples. And
23 we will talk a little bit more about holds. But
24 just -- well, let me -- let me get off of that and
25 just stay on the retentions for a second.

1 I noticed in Exhibit 2D, or Tab 2D, which
2 is Exhibit 2D, the PTI agreement appeared to be
3 for retention of talc samples for four years. And
4 perhaps we should look at that and I'll ask you
5 about that. And that's at page 9 of 2D. Oh, we
6 get into this page issue with this, don't we?

7 Did you see it in there?

8 A. Yes. 7 of 16 and below that, 9 of 19. So
9 it's Section 12.4.

10 Q. Okay. And what is the -- first of all,
11 what samples is this referring to? This is --
12 these are product samples that they're referring
13 to?

14 A. Yes. So this -- this Section 12.4 falls
15 under 12.0 product controls, which relate to the
16 identification sampling and testing of finished
17 product.

18 Q. Okay. And so the retention on finished
19 product was for what period?

20 A. Four years from date of manufacture or one
21 year after expiration date.

22 Q. What's the -- that's the expiration date,
23 for example, that you'd see on the actual bottle
24 or container? Is that what that refers to?

25 A. I don't know.

1 Q. What's the date of this quality system
2 procedure or quality responsibility agreement?

3 A. February 2005.

4 Q. Do you know -- at this point in 2005,
5 there had already been talc litigation hold in
6 place as early as 2' -- sorry, 1999.

7 Do you know if it affected this retention
8 as to the talc that was -- the Johnson -- the baby
9 powder that was being manufactured by Pharma Tech
10 Industries in 2005?

11 MR. COX: Object to the form.

12 BY MR. SWANSON:

13 Q. In other words, did the legal hold sort of
14 suspend this policy?

15 MR. COX: You're asking as to the samples
16 described in that document?

17 MR. SWANSON: Yes.

18 THE WITNESS: I'm -- I would want to check
19 the legal holds. I'm not aware that the holds in
20 that time referred to samples.

21 BY MR. SWANSON:

22 Q. Okay. Do you have any information other
23 than -- and we'll get to the legal holds shortly.

24 Do you have any other information in terms
25 of retention policies with respect to retention of

1 talc samples, either, you know, the talc ore or
2 the milled talc that may have been tested on a
3 quarterly or some other basis, or of actual
4 product test -- finished product test samples?

5 A. I have a general understanding that
6 samples -- that the universe of samples comprised
7 those that were associated with a batch or a lot
8 and retained in accordance with -- with the
9 company's retention schedules.

10 As a second category was samples that were
11 used specifically for testing purposes, and those
12 samples were not retained until the last year.

13 And a third category would be historical
14 samples that would be obtained from the museum and
15 other sources.

16 Q. Thank you for that answer.

17 So I think that was pretty clear. So let
18 me just -- as to the samples related to testing of
19 the talc, you said until a year ago those were not
20 retained; correct?

21 A. That's correct.

22 Q. So they were destroyed?

23 A. The samples used specifically for creating
24 test results were not retained.

25 Q. Okay. And now they are being retained?

1 A. Yes.

2 Q. And do you know why that policy was
3 changed in the last year?

4 A. My understanding is that within the past
5 year a request was made to the testing body to
6 retain that information.

7 Q. And what testing body is that?

8 A. Well, that would include RJ Lee, anyone
9 else doing testing.

10 Q. Okay. So --

11 MR. SWANSON: Do you want one last break?

12 MR. COX: Sure.

13 MR. SWANSON: And then we'll go until the
14 end of the day?

15 MR. COX: Yeah.

16 MR. SWANSON: And if we need to discuss
17 anything, we can discuss it.

18 MR. COX: Sounds good.

19 MR. SWANSON: Let's go off the record.

20 THE VIDEOGRAPHER: This marks the end of
21 Media Number 4 in the deposition of James
22 Mittenthal.

23 Going off the record at 4:13 p.m.

24 (Recess taken.)

25 THE VIDEOGRAPHER: On the record at

1 4:49 p.m. This marks the start of Media Number 5
2 in the deposition of James Mittenthal.

3 You may continue, Counsel.

4 BY MR. SWANSON:

5 Q. Okay, Mr. Mittenthal, I'm going to try to
6 be real efficient here for the rest of the part of
7 the day that we have, and we're going to get into
8 talking about holds now which we've touched on a
9 few times, but I want to go over some information
10 about that.

11 THE VIDEOGRAPHER: Is your microphone on?

12 Okay.

13 BY MR. SWANSON:

14 Q. So, in the most basic sense, a legal hold
15 is an instruction to custodians or possessors of
16 certain kinds of specified documents to preserve
17 them and not destroy those documents as long as --
18 documents and information as long as the hold is
19 in effect; is that correct?

20 A. I would agree.

21 Q. And a hold stays in effect until a hold --
22 a release notice is issued; is that right?

23 A. I would generally agree. There may be
24 other circumstances besides a release by which a
25 receiver of a hold could be relieved of that

1 obligation.

2 But certainly the counterpart to a hold is
3 a release.

4 Q. Okay. And you've got -- you've prepared a
5 history of holds, which is Exhibit 21; correct?

6 A. Is that -- just make sure I've got my
7 version in front of me somewhere.

8 Q. You should have your copy there. I know
9 you've got a lot of stuff. You know, maybe we can
10 get some of your things there out of the way and
11 put them in a stack.

12 A. Here it is.

13 Q. Okay. So Exhibit 21 is a list of Johnson
14 & Johnson holds with respect to talc litigation
15 that you've compiled; correct?

16 A. Yes.

17 Q. Okay. And the first one that you've got
18 there is Theresa Krushinski on November 11, 19199,
19 and that was a talcosis case; correct?

20 A. Yes.

21 Q. And then the next one you've got is 2000,
22 which is a mesothelioma case; correct?

23 A. Yes.

24 Q. And both Johnson & Johnson's Baby Powder;
25 true?

1 A. Johnson's Baby Powder.

2 Q. Sorry. Johnson's Baby Powder. And I
3 think the third one listed there is 2003, the
4 Hozeny case.

5 Do you see that?

6 A. Yes.

7 Q. And I know that's been produced to us.
8 Let me find this. At Exhibit 1B.

9 Do you have that with you? Oh, it's in
10 your -- those exhibits are marked per tab.

11 A. Okay.

12 Q. Exhibit 1B. So in Exhibit 1, you have
13 several holds and then some were produced after
14 that. And you see there, in that hold, this was
15 hold notice issued by the legal department;
16 correct?

17 A. Yes.

18 Q. And this puts folks on notice in the
19 company that if you fail to preserve materials
20 that are under a hold, it can result in the court
21 imposing penalties or sanctions; right?

22 A. Yes.

23 Q. Now, you had previously testified that you
24 had acted as consultant and a witness in the
25 Ethicon litigation for Johnson & Johnson; correct?

1 A. Consultant and a witness meaning the
2 same -- the same role?

3 Q. Yeah. In the same -- in the Ethicon
4 litigation. Yeah. In other words, you were a
5 witness and you were also their consultant in that
6 litigation; true?

7 A. I was a witness.

8 Q. A witness.

9 A. Not a --

10 Q. Were you working? Were you hired by
11 Johnson & Johnson?

12 A. I was hired to be a 30(b)(6) only.

13 Q. Okay. All right. And you testified in
14 the case; right?

15 A. Yes.

16 Q. And you know that there was an allegation
17 by the plaintiffs in the case that there was a
18 failure to preserve evidence that had been subject
19 to a hold; right?

20 A. I -- I recall that those issues arose,
21 yes.

22 Q. And you investigated that issue; correct?

23 A. Yes.

24 Q. And you gave a deposition about it?

25 A. Yes.

1 Q. And you discovered through your
2 investigation something you testified about that
3 potentially responsive documents and information
4 were destroyed that had been subject to a hold;
5 correct?

6 MR. COX: Object to the form. Object that
7 this is beyond the scope of the notice.

8 THE WITNESS: I investigated and I
9 testified as to certain occasions where I had
10 observed custodians not preserving materials that
11 they could have.

12 BY MR. SWANSON:

13 Q. And those materials were materials that
14 were under holds at the time; correct?

15 A. Yes.

16 Q. Have there been any -- have there been any
17 issues of loss with respect to talc litigation by
18 Johnson & Johnson that have not been disclosed to
19 plaintiffs that you're aware of from your work in
20 these talc cases?

21 A. I'm not.

22 Q. Now, we've talked about hold release
23 notices. You said that was one way that hold
24 would no longer be in effect. What's the other
25 way that a hold would no longer be in effect if it

1 wasn't pursuant to a hold release being issued by
2 the legal department?

3 A. There could be a direct communication with
4 the custodian saying this is not something that's
5 required anymore. There could be circumstances
6 that -- that result in the obligation for the
7 custodian going away.

8 Q. Have you -- we haven't received any -- or
9 in this case that I've seen, no legal hold
10 releases were produced.

11 Are you aware of any Johnson & Johnson
12 talc litigation legal hold releases that have been
13 issued?

14 A. I'm not.

15 Q. Are you aware of any of the holds having
16 been any -- any custodians having been released
17 from any of the talc litigation holds that have
18 been issued since 1999?

19 A. No.

20 Q. And is it fair to say that each of the
21 holds that you've documented starting in 1999
22 through 2017 has essentially been incorporating
23 whatever was already under a hold pursuant to the
24 prior hold and then adding some more details to
25 it; is that -- is that correct?

1 MR. COX: Object to the form of the
2 question.

3 THE WITNESS: Well, to my recollection,
4 the 2017 holds serve to -- serve that function to
5 gather earlier holds. The holds between 1999 and
6 2017 refer to specific cases.

7 BY MR. SWANSON:

8 Q. Okay. Now, you said that you weren't
9 aware of any releases of those holds. So, even
10 though those holds refer to specific cases, they
11 weren't released or no longer in effect just
12 because those cases ended, were they?

13 MR. COX: Object to the form.

14 THE WITNESS: As I mentioned, I hadn't
15 seen any releases of those -- of those holds.

16 BY MR. SWANSON:

17 Q. I understand that. But it's an additional
18 question, which is, were those holds still in
19 effect on Johnson & Johnson that had been issued
20 in specific cases even after the issues of the
21 case resolved?

22 A. Well, the -- the instructions were -- were
23 still out there. In terms of the legal
24 obligation, I can't speak to that. That's a legal
25 determination. The holds themselves had not been

1 subject to releases.

2 Q. Earlier you mentioned that the holds were
3 related to, I think you said something like
4 consumer talc or something like that.

5 Are there -- are there releases related to
6 other kind of talc -- not releases. Are there any
7 litigation holds that were ever put on Johnson &
8 Johnson's businesses with respect to any other
9 type of talc, like industrial talc, that you're
10 aware of?

11 A. I'm not aware. I specifically requested
12 consumer talc holds as being reflective of my
13 obligations under the notice. I'm not aware of
14 other holds.

15 Q. Okay. And you've asked -- you've asked
16 witnesses about holds, is that correct, people
17 that you've spoke to?

18 A. The -- the interview subjects, the topic.
19 Not in every case but in some cases, it did come
20 up.

21 Q. Did you ask them if -- did you ask -- did
22 you do anything to audit whether or not they were
23 complying with holds?

24 A. I -- I did not see a compliance audit as
25 part of my investigation. I asked in some cases

1 the records personnel about the mechanism for
2 holds. I did not personally audit any compliance.

3 Q. Did you audit any of the cleanout?
4 Remember, we talked about the annual cleanout
5 procedure. Did you audit any cleanout notices or
6 documents documenting the cleanout procedures to
7 see if any records had been destroyed that were
8 under legal holds or retention schedules?

9 A. No. That was not part of my
10 investigation.

11 Q. Now, the 1999, let's start with the first
12 one here. Let me see if I can locate this. Here
13 we go.

14 (Whereupon, Plaintiff's Exhibit 32 was
15 marked for identification.)

16 BY MR. SWANSON:

17 Q. I'm handing you Exhibit Number 32 to your
18 deposition. And for the record, what is
19 Exhibit 32?

20 A. A document preservation notice dated
21 November 11, 1999.

22 Q. And that's the one in the Krushinski case;
23 correct?

24 A. Yes.

25 Q. And that is the first one that you're

1 aware of; true?

2 A. Yes.

3 Q. And this one was directed as pertaining to
4 Johnson's Baby Powder. It says that on the second
5 page of this. And it says on the first page that
6 it just -- in the first paragraph there it says
7 "JJCP" --

8 That would be Johnson & Johnson Consumer
9 products; is that right?

10 A. That's my read.

11 Q. -- "is party to a lawsuit involving
12 allegations of manufacturing or design defect or
13 failure to warn in connection with the below
14 product." And it mentions Johnson's Baby Powder.

15 To which companies, Johnson & Johnson
16 companies, operating units, divisions was this
17 document preservation notice directed?

18 A. It's not specified.

19 Q. Do you have any information as to this
20 hold whether or not it applied, for example, to
21 operating units overseas such as in Hong Kong and
22 the Philippines?

23 A. I don't have information as to who it was
24 distributed to.

25 Q. Do you know any of the individual

1 recipients of this hold notice?

2 A. That was not part of my investigation.

3 Q. Does that information still exist as to
4 who the recipients were of the hold in 1999?

5 A. I don't know.

6 Q. In 1999, what was the policy of Johnson &
7 Johnson with respect to distribution of holds, if
8 it had one?

9 A. I can check my notes with respect to that.
10 I'm noting on page 34 in the Renay Lawson section,
11 simply that Renay would send holds and releases as
12 directed by legal and upload to Web site. Had
13 different distribution lists.

14 Q. And she had been there since 2009;
15 correct? It says nine years --

16 A. Okay.

17 Q. -- at Consumer.

18 This is Renay Lawson, the records
19 information management lead; right?

20 A. Yes.

21 Q. Okay.

22 A. I have further information on page 36 from
23 Rosina Sheerin that both she and Renay would send
24 hold notices at different times and that they
25 maintained distribution lists based on a cover

1 page.

2 Q. Okay. And do you know if those
3 distribution lists still exist?

4 A. I know that I have seen distributions on
5 some of the hold notices.

6 Q. Okay. And we're going to go through each
7 one in a little bit, so we'll get to that, if
8 there's a distribution list.

9 With respect to 1999 Krushinski case hold,
10 you don't have a distribution list for that, do
11 you?

12 A. Correct.

13 Q. And again, as the Johnson & Johnson's
14 representative on this issue, this is the first
15 talc litigation hold that was issued in 1999;
16 correct?

17 A. Consumer talc.

18 Q. Consumer talc.

19 All right. So you're not aware of any --
20 well, let me ask you this way: And not to get off
21 on another sort of substantive issues too much.
22 But do you have information that there were holds
23 related to talc that wasn't consumer talc?

24 A. No.

25 Q. If you look at your binder there, Tab 1C.

1 This is the January 7, 2000 document preservation
2 notice in the Barbara Bloch case.

3 Do you see that?

4 A. Yes.

5 Q. And this was, says "JJCPI, et al. is a
6 party to a lawsuit involving allegations of
7 manufacturing or design defect or failure to warn
8 in connection with the below product."

9 And, again, this is in regards to the
10 Johnson's Baby Powder; true? It's on the next
11 page there? Oh, you've got it in your summary.

12 A. Yes. Yes.

13 Q. And by the way, just to make this clear on
14 the record, "document preservation notice" means
15 the same thing as a legal hold notice; correct?

16 A. Generally, yes.

17 Q. And Johnson & Johnson at some point just
18 changed the language that they used to refer to
19 it? They called it -- later they called it a
20 "legal hold notice"; true? We can get to those
21 later.

22 So, as far as this one, do you know who --
23 which operating units or companies of Johnson &
24 Johnson received that, whether or not it was
25 anybody beyond just Johnson & Johnson Consumer

1 Products, Inc.?

2 A. I do not.

3 Q. Okay. And do you know to whom -- what
4 individuals received this notice?

5 A. I do not.

6 Q. Do you have any information about what
7 training was done of individuals about how to
8 effectuate this notice?

9 MR. COX: Object to the form.

10 THE WITNESS: I have a general
11 understanding from the records officer that there
12 was training in the records program and that that
13 included legal hold instructions.

14 BY MR. SWANSON:

15 Q. And did you say "records manager"?

16 A. Training in records management issues.

17 Q. Who was it that you were speaking to about
18 that issue?

19 A. Possibly Lisa Kaiser. Let me...

20 Q. Before I make you look that up -- and if
21 you need to look it up to get into the heart of
22 it, what did she tell you about what the training
23 was?

24 A. Actually, I'm looking at the Joann Dodd
25 information.

1 Q. Can you give me a page number on that,
2 please?

3 A. Oh, yes. 29. Sure.

4 So Ms. Dodd spoke about the training that
5 was -- that was provided.

6 Q. Can you direct me to that, please?

7 A. Yes. The bottom of -- near the bottom of
8 page 1. "Training included legal hold, departing
9 associates, retention procedures, roles."

10 Q. And she was the -- she is this analyst
11 records management, J&J Consumer, Inc.; right?

12 A. Yes.

13 Q. And do you know -- she started in 2007 or
14 '8?

15 A. Yes.

16 Q. Do you know at what point those -- the
17 training started that she's referring to?

18 A. Not the exact start date, no.

19 Q. And do you know how -- do you have any
20 information about how far that training goes back
21 and whether there was any training in the year
22 2000 at the time of the Barbara Bloch case?

23 A. I don't have specifics on that.

24 Q. At Tab 1B there's a hold in the Hozeny --
25 Hozeny case versus Johnson & Johnson Consumer

1 Companies, Inc.

2 Do you see that?

3 A. Yes.

4 Q. And, again, this is called the "document
5 preservation notice." The date is May 16, 2003.

6 And this is Exhibit 1B, for the record.

7 And what was -- this looks similar to
8 the '99 and 2000 holds that we've seen. But does
9 it -- it looks like it may add something
10 additional. Can you tell me what is the subject
11 of this hold?

12 A. You mean what is the -- the --

13 Q. Well, what product was at issue and --

14 A. It generally referred to talc products.

15 Q. And the basic language is the same,
16 correct, of the hold? As the holds we had
17 discussed for the 1999 and 2000 cases?

18 MR. COX: Object to the form.

19 BY MR. SWANSON:

20 Q. But then you get to the details of what
21 materials are to be held, and there's a bit more
22 detail. It's fleshed out a bit more; correct?

23 A. The language has evolved. There are eight
24 categories as opposed to four categories with
25 earlier notices. It is -- it is somewhat

1 different.

2 Q. We had earlier -- I should hit on this now
3 so I don't forget, but we had talked about talc
4 samples. And in this 2003 hold looking at the
5 list of materials that were subjects -- subject
6 matters of documents to be preserved, did that
7 include talc samples in 2003?

8 A. I do not believe it did.

9 Q. Okay. And just looking back quickly on
10 this, the 1999 and 2000, those didn't include --
11 wouldn't include talc samples either; correct?

12 A. There is references to information about
13 samples, not samples themselves.

14 Q. Okay. Can you point me to that, under
15 which?

16 A. Under Section 4 in both the '99 and the
17 2000 documents.

18 Q. But not the samples themselves; true?

19 A. Correct. And only those records about the
20 samples pertaining to the event.

21 Q. And the 2003 legal hold in the Hozeny
22 case, and I apologize if I asked this, do you know
23 if this applied to any overseas operating
24 companies of Johnson & Johnson, like Johnson &
25 Johnson Philippines or Johnson & Johnson Hong

1 Kong?

2 A. My general understanding is that it did
3 not.

4 Q. And your general understanding as to it
5 not applying, would that be the same as to the
6 1999 and 2000 holds, too?

7 A. Yes.

8 Q. And what's the source of that
9 understanding?

10 A. That information came from counsel.

11 Q. Okay. And I believe the next hold is a
12 2009 hold; is that correct?

13 A. Yes.

14 Q. You have a copy of that with you? I know
15 I have it here somewhere.

16 MR. COX: I have extra copies if you need.

17 MR. SWANSON: That would be great, thanks,
18 Chris. I'm sorry -- oh, wait. Is this it? I've
19 got it. Yeah. Okay. Good. I have it. Thank
20 you.

21 Okay. I have marked as Exhibit 33 to your
22 deposition this hold in the Berg case.

23 (Whereupon, Plaintiff's Exhibit 33 was
24 marked for identification.)

25 BY MR. SWANSON:

1 Q. Can you take a look at that and, just for
2 the record, is that the Deane Berg v. Johnson &
3 Johnson Consumer Companies, et al. hold dated
4 December 15, 2009?

5 A. Yes.

6 Q. And that's Exhibit 33. And this hold
7 again is with respect to Johnson & Johnson's Baby
8 Powder and this time it also specifically
9 references Shower to Shower powder; right?

10 A. Yes.

11 Q. And Shower to Shower is another cosmetic
12 talc product that Johnson & Johnson made; true?

13 A. At the time, yes.

14 Q. And this one in 2009 we get quite a bit
15 more detail; correct?

16 A. Yes.

17 Q. And there's even, it looks like a
18 distribution list, is that right, in terms of what
19 units it's distributed to?

20 A. Yes.

21 Q. And it indicates here in the units that
22 this legal hold were issued to is -- are
23 identified that they're checked and it looks like
24 they're also highlighted in yellow; true?

25 A. I see that, yes.

1 Q. And that includes Johnson & Johnson
2 Consumer Companies, Inc.; Johnson & Johnson
3 Consumer and Personal Products Worldwide, Division
4 of Johnson & Johnson Consumer Products, Inc. Then
5 it says Johnson & Johnson Corporate, Corporate
6 Communications, and then also under Corporate
7 Consumer and Personal Care and Quality and
8 Compliance World -- is that "Worldwide"? WW?

9 A. Yes.

10 Q. This notice was not issued to Johnson &
11 Johnson Philippines, was it? Or Johnson & Johnson
12 China?

13 A. No.

14 Q. Okay. Do we -- do you know who the
15 individuals -- do you know -- there are identified
16 Johnson & Johnson operating units and companies
17 that were issued this legal hold notice. Do you
18 know what individuals received it other than those
19 listed as receiving this document on the first
20 page, it looks like? And there's about, what,
21 15 -- 15 to 20 individuals there listed.

22 Do you see that?

23 A. Yes. It would be under "attachments"?

24 Q. Yeah.

25 A. "Cc."

1 Q. Well, there's only, I guess, about --
2 well, under "attachment," those are people who
3 received this document preservation notice; is
4 that right?

5 MR. COX: Object to the form.

6 THE WITNESS: I'm sorry. One more time,
7 please.

8 BY MR. SWANSON:

9 Q. Under -- next to "cc," where it says the
10 people who were copied, they received this;
11 correct?

12 A. Yes.

13 Q. Okay. What about the other people in the
14 right -- more to the right column? Did they
15 receive it? What are they listed as here? Or do
16 you have an understanding?

17 A. Well, I would just generally conclude that
18 this is a long cc list and they -- there is no --
19 it appears to be in alphabetical order starting
20 with Braunreuther going up to Will -- Will Wiley.

21 Q. Do you know of anybody -- do you know of
22 any other individuals received this notice other
23 than these indicated here?

24 A. Well, the recipients of the communication
25 were Debbie Staneruck and Edith Mendez, and they

1 were directed to distribute the notice companywide
2 to the attached companies as well as anyone else
3 that they may understand might be knowledgeable of
4 these issues.

5 Q. Okay. And when you say "distributed
6 companywide," do you know in 2009 -- strike that.

7 The next one that I want to ask you about
8 is -- there were three different holds in 2014.

9 Have you seen those?

10 A. Yes.

11 Q. Okay. And that would be the Chesteen
12 case, Estrada, and the State of Mississippi;
13 right?

14 A. Yes.

15 Q. And these were all issued as a result of
16 lawsuits against Johnson & Johnson Consumer
17 Companies, Inc.?

18 A. That's my understanding.

19 MR. SWANSON: Okay. I'm not going to
20 spend much time on these, but I do want to get
21 them marked and attached.

22 So 34 will be the hold in the Chesteen
23 case.

24 (Whereupon, Plaintiff's Exhibit 34 was
25 marked for identification.)

1 MR. SWANSON: 35 will be the hold in the
2 Estrada case.

3 (Whereupon, Plaintiff's Exhibit 35 was
4 marked for identification.)

5 MR. SWANSON: And 36 will be the 2014 hold
6 in the State of Mississippi v. Johnson & Johnson
7 and Johnson & Johnson Consumer Companies, Inc.
8 case.

9 (Whereupon, Plaintiff's Exhibit 36 was
10 marked for identification.)

11 BY MR. SWANSON:

12 Q. And, again, if you look at these, and you
13 can go ahead and look at them, each of these
14 notices in 2014, they relate -- related to
15 Johnson's Baby Powder and Shower to Shower
16 products; correct?

17 A. Well, Estrada is only baby powder.

18 Q. Okay.

19 A. The other two from 2014 mention both
20 products.

21 Q. Okay. Thank you.

22 And, again, there's a recipient or a
23 distribution list in terms of what operating units
24 or companies received this, correct, these three
25 holds?

1 A. Well, this is a sector-based distribution.

2 Q. Okay. And these were just domestic
3 companies that received these holds; correct?

4 A. Yes.

5 Q. So this was not issued to Johnson &
6 Johnson Philippines or Johnson & Johnson Hong
7 Kong; correct?

8 A. Correct.

9 Q. Or Johnson & Johnson Korea, correct, if
10 there was a Johnson & Johnson --

11 A. Correct.

12 Q. -- Korea at that time?

13 MR. SWANSON: And then finally we have
14 here a 2017 hold, which we'll mark as Exhibit 37.

15 (Whereupon, Plaintiff's Exhibit 37 was
16 marked for identification.)

17 BY MR. SWANSON:

18 Q. I'll go ahead and hand you that one. And
19 this is what you've referred to in Exhibit 21 your
20 summary list of holds as talc asbestos. You say
21 "PL litigation."

22 What does that stand for?

23 MR. COX: Object to the form.

24 THE WITNESS: My understanding is that
25 that is a product liability. But this is not that

1 one.

2 BY MR. SWANSON:

3 Q. Oh, this isn't. Okay. Well, this is the
4 talc ovarian cancer litigation hold that I handed
5 you; correct?

6 A. Yes.

7 MR. SWANSON: Chris, do you have a copy of
8 this other one?

9 MR. COX: It should be in the binder, 1C.

10 MR. SWANSON: Thank you.

11 MR. COX: Sure.

12 MR. SWANSON: Appreciate that.

13 BY MR. SWANSON:

14 Q. Well, let's just -- since I've attached
15 this 37, this legal hold, was it -- that's
16 attached as 37 as a talc ovarian cancer litigation
17 hold; correct?

18 A. Yes.

19 Q. Do you know what year -- is this the
20 current -- this is the current one?

21 A. This is the most recent one for ovarian
22 cancer of which I'm aware.

23 Q. Okay. And if you look at Exhibit 1A to
24 your deposition, which is Tab 1A, we can go to the
25 one that you referred to in your list as the talc

1 asbestos litigation hold.

2 Do you have that in front of you?

3 A. Yes, I do.

4 Q. Is this the current legal hold for talc
5 asbestos litigation?

6 A. This is the most recent one I've received
7 that I'm aware of.

8 Q. And I don't know if you use this word, but
9 I think you indicated earlier that your
10 understanding was this was sort of an attempt to
11 consolidate the various holds; is that right?

12 A. With respect to those mesothelioma-related
13 matters, yes.

14 Q. Now, in terms of what information is being
15 held either under ovarian talc litigation hold or
16 a case that was a talcosis case like the
17 Krushinski case, these are all holds since 1999
18 that we're talking about that are related to the
19 Johnson & Johnson's Baby Powder and Shower to
20 Shower; correct?

21 A. Yes.

22 Q. And -- so in terms of the sort of universe
23 of documents, types of documents and records that
24 would be held, it's pretty much the same universe,
25 correct --

1 MR. COX: Object to the form.

2 BY MR. SWANSON:

3 Q. -- from what your evaluation of these
4 holds has been in terms of looking at what records
5 and information are supposed to be held?

6 MR. COX: Object to the form.

7 THE WITNESS: I -- I would concur that the
8 body of documents being held generally relates to
9 both families of cases. I would not agree that
10 every document from one family is connected to the
11 other family of cases. I -- I'm not competent to
12 decide that, but they are being held. Both --
13 both sets of holds concern a body of information.

14 BY MR. SWANSON:

15 Q. Right. And the body of information is
16 about -- in terms of what's actually being held,
17 people are being instructed to hold and preserve,
18 it's essentially almost the exact same body of
19 information; correct?

20 A. Yes.

21 MR. COX: Object to the form.

22 BY MR. SWANSON:

23 Q. Okay. Now, the 2017 talc asbestos
24 litigation hold is the first one that specifically
25 references talc, but there were prior holds that

1 were issued in cases where the injury being
2 alleged was mesothelioma; correct?

3 A. I'm sorry. The first one that references
4 talc?

5 Q. No. Did I say that? If so.

6 It's the first one that specifically
7 references asbestos; is that right? From what you
8 saw?

9 A. You know, I don't recall that. I did not
10 look for the word "asbestos" in earlier holds.

11 Q. Okay. But in any case, regardless, the
12 2000 and 2002 to 2003 holds were done in cases
13 where there was an allegation of mesothelioma by
14 the plaintiff; right?

15 A. Yes.

16 Q. And this talc asbestos litigation hold,
17 the current one that we have here, or the most
18 recent one you're aware of, what Johnson & Johnson
19 entities is that one directed to?

20 A. This hold notice is directed at individual
21 custodians rather than specific entities.

22 Q. And is there a list of custodians anywhere
23 that you've seen that this is directed to?

24 A. Not that I've seen.

25 Q. Have you -- do you have information about

1 at which Johnson & Johnson -- you know, operating
2 units, subsidiaries, divisions, companies -- at
3 which of those companies individuals were
4 recipients of this current hold notice?

5 A. Only that the legal department has made a
6 determination of the appropriate custodians to
7 deliver the notice to.

8 Q. Do you know if any of those custodians are
9 at Johnson & Johnson Philippines?

10 A. Yes.

11 Q. Okay. And as far as you -- and who is
12 that individual or individuals at Johnson &
13 Johnson Philippines?

14 A. I -- I'm not aware.

15 Q. But you got information from some source
16 that Johnson & Johnson -- somebody at Johnson &
17 Johnson Philippines received this notice; is that
18 correct?

19 A. Yes.

20 Q. And what's the source of that information?

21 A. You mean how did I learn that?

22 Q. Yes.

23 A. From counsel.

24 Q. Okay. And based on our review of the
25 prior notices, was this the first notice that

1 Johnson & Johnson issued legal hold notice for
2 talc litigation issued to Johnson & Johnson
3 Philippines?

4 A. It's the first I'm aware of.

5 Q. Now, you saw in the 2014, in the prior
6 ones going back, there was no indication that it
7 went to Johnson & Johnson Philippines. In fact,
8 the distribution list from 2014 and 2009
9 specifically showed that it was not distributed to
10 Johnson & Johnson Philippines; correct?

11 A. In 2009 it specifically showed that. In
12 2014 it simply denoted "US," "OUS." It didn't
13 have a country-by-country listing.

14 Q. Okay. If you look at -- if you don't have
15 those in front of you -- I think you do.

16 If you look at 34, for example, 35?

17 A. Yes.

18 Q. It says "U.S. only"; right?

19 A. Correct.

20 Q. So those don't -- they did not go to
21 Johnson & Johnson Philippines; correct?

22 A. They didn't go outside the U.S.

23 Q. Right. That was all I was confirming.
24 Okay. And that would be the same -- did this
25 2' -- the current Johnson & Johnson talc

1 litigation -- talc asbestos litigation hold, go to
2 Johnson & Johnson Hong Kong?

3 A. Individuals in Hong Kong.

4 Q. And where did you learn that?

5 A. From counsel.

6 Q. Did it go to Johnson & Johnson China?

7 A. I don't know.

8 Q. Okay. And when did it go to Johnson &
9 Johnson Philippines?

10 A. Well, as I mentioned, it didn't go to an
11 entity; it went to individuals in those areas.
12 And that was on May 26th of 2017.

13 Q. And was the -- is that the date that that
14 hold was issued?

15 A. Yes.

16 Q. And do you specifically know that it went
17 to those individuals on that date, at Johnson &
18 Johnson Philippines and Hong Kong?

19 A. I know that the -- the -- I don't know
20 that specifically. I know that the hold -- the
21 custodians were notified on that date. I have no
22 reason to believe that the Philippines or any
23 other area were treated differently.

24 MR. SWANSON: Are you okay to continue
25 some more?

1 I mean, you guys tell me, because I'm --
2 I'm moving right along, but.

3 THE WITNESS: I thought that was a good
4 stopping point, but I -- I --

5 MR. SWANSON: Well, I mean, you know,
6 since we do have a little bit of an issue here
7 about when we're going to finish tomorrow, I
8 certainly --

9 MR. COX: Are you about to start a new
10 topic?

11 MR. SWANSON: It's related, but it's
12 getting into an area that's going to take some
13 time.

14 MR. COX: Why don't we go off the record,
15 let's talk for a couple minutes, and we'll see.

16 MR. SWANSON: All right. Let's go off the
17 record.

18 THE VIDEOGRAPHER: Off the record at 5:47.

19 (Off the record.)

20 THE VIDEOGRAPHER: On the record at 6:01.
21 You may continue, Counsel.

22 MR. SWANSON: So we have an agreement
23 about tomorrow's deposition and the conclusion of
24 the deposition, and Mr. Cox will state that for
25 the record, and if there's anything I disagree

1 with, we'll hammer it out.

2 MR. COX: Yes. First, the Johnson &
3 Johnson defendants object to the continuation of
4 the deposition given the two days of testimony of
5 this witness has already sat for, given the number
6 and nature of the subject matters for which this
7 witness has been tendered, and the limited
8 relevance to the claimed defenses in the case, we
9 don't believe additional time is necessary or
10 appropriate.

11 Nevertheless, in the spirit of compromise,
12 as Mr. Swanson indicated, because the witness and
13 counsel are here, we've agreed to continue the
14 deposition tomorrow under the following
15 circumstances: The deposition will begin at
16 9:00 a.m. There will be reasonable breaks.
17 Plaintiffs will conclude their questioning by
18 1:45 p.m. at which time the J&J defendants will
19 have an opportunity to ask direct -- pose the
20 direct testimony from the witness and after which
21 plaintiffs will be permitted a recross that's
22 limited to the issues raised on the direct.

23 MR. SWANSON: That's our agreement, yes.

24 We can go off the record.

25 THE VIDEOGRAPHER: The marks the end of

1 Media Number 5 in the deposition of James
2 Mittenthal and we are going off the record and
3 adjourning for the day at 6:02 p.m.

4
5 (Whereupon, the deposition was
6 adjourned at 6:02 p.m.)
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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ALAMEDA)
4

5 I, EARLY LANGLEY, a Certified Shorthand
6 Reporter, State of California, do hereby certify:

7 That JAMES PETER MITTENTHAL, in the foregoing
8 deposition named, was present and by me sworn as a
9 witness in the above-entitled action at the time and
10 place therein specified;

11 That said deposition was taken before me at
12 said time and place, and was taken down in shorthand by
13 me, a Certified Shorthand Reporter of the State of
14 California, and was thereafter transcribed into
15 typewriting, and that the foregoing transcript
16 constitutes a full, true and correct report of said
17 deposition and of the proceedings that took place;
18 IN WITNESS WHEREOF, I have hereunder subscribed my hand
19 on October 22, 2018.

20
21 
22 EARLY LANGLEY, CSR NO. 3537
23 State of California
24
25

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Exhibit 174

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF NEW JERSEY

3 - - -

4
5 IN RE: JOHNSON & :
6 JOHNSON TALCUM POWDER :
7 PRODUCTS MARKETING, :
8 SALES PRACTICES, AND : NO. 16-2738
9 PRODUCTS LIABILITY : (FLW) (LHG)
10 LITIGATION :
11 :
12 THIS DOCUMENT RELATES :
13 TO ALL CASES :

14 - - -

15 July 12, 2018

16 - - -

17 Videotaped deposition of
18 MARGARET M. GUROWITZ, taken pursuant to
19 notice, was held at the law offices of
20 Drinker Biddle & Reath, 105 College Road
21 East, Princeton, New Jersey, beginning at
22 9:29 a.m., on the above date, before
23 Michelle L. Gray, a Registered
24 Professional Reporter, Certified
 Shorthand Reporter, Certified Realtime
 Reporter, and Notary Public.

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4

Testimony of: MARGARET M. GUROWITZ

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Request for Production of Documents

PAGE LINE

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Stipulations

PAGE LINE

None.

Questions Marked

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None.

1 THE VIDEOGRAPHER: We are
2 now on the record.

3 My name is Devyn Mulholland.
4 I'm a videographer for Golkow
5 Litigation Services.

6 Today's date is July 12,
7 2018. The time is 9:29 a.m.

8 This video deposition is
9 being held in Princeton, New
10 Jersey, in the matter of Talcum
11 Powder Litigation MDL.

12 The deponent is Margaret
13 Gurowitz.

14 Counsel will be noted on the
15 stenographic record.

16 The court reporter is
17 Michelle Gray and will now swear
18 in the witness.

19 - - -

20 ... MARGARET M. GUROWITZ,
21 having been first duly sworn, was
22 examined and testified as follows:

23 - - -

24 MS. FOURNIER: For purposes

1 of the record, Ms. Gurowitz is
2 being produced today pursuant to a
3 March set of deposition notices
4 served by the Plaintiffs' Steering
5 Committee as amended, adjusted,
6 whatever is the right word, by
7 both the Court and the agreement
8 of the parties.

9 She will be representing
10 both J&J and JJCI today, and she
11 is being presented on Topic 3.4.

12 MR. LAPINSKI: You just took
13 three quarters of my outline.

14 - - -

15 EXAMINATION

16 - - -

17 BY MR. LAPINSKI:

18 Q. Good morning, Ms. Gurowitz.
19 How are you this morning?

20 A. Good.

21 Q. I introduced myself to you
22 earlier today. My name is Dan Lapinski,
23 and I'm here on behalf of the Plaintiffs'
24 Steering Committee.

1 MR. LAPINSKI: This
2 deposition is being taken pursuant
3 to the February 6, 2018 order of
4 Special Master Pisano and
5 subsequent modifications to that
6 order and on topics permitted to
7 be discovered, which include
8 composition, testing, sampling and
9 bias.

10 The deposition is also being
11 taken pursuant to the Plaintiffs'
12 Steering Committee's second
13 amended notice of 30(b)(6)
14 depositions served on defendants
15 Johnson & Johnson and Johnson &
16 Johnson Consumer Incorporated.

17 The Plaintiffs' Steering
18 Committee reserves the right to
19 notice and conduct follow-up
20 depositions, including depositions
21 of individual witnesses identified
22 during this 30(b)(6) deposition
23 and on topics discussed by
24 Ms. Gurowitz.

1 Ms. Gurowitz has been
2 designated to testify today in
3 response to deposition notices
4 served upon both by Johnson &
5 Johnson and Johnson & Johnson
6 Consumer, and it's our expectation
7 that her testimony will be binding
8 upon both defendants.

9 To the extent Ms. Gurowitz
10 is unable to offer testimony as to
11 the conduct of one or both of the
12 J&J defendants, Plaintiffs'
13 Steering Committee reserves the
14 right to request a supplemental
15 deposition, so --

16 MS. FOURNIER: Can I add one
17 thing?

18 MR. LAPINSKI: You can.

19 MS. FOURNIER: In response
20 to the mention of the amended
21 notices, I just want to note for
22 the record our ongoing objection
23 to the definition and specifically
24 the definition of asbestos that

1 was added into the second notice.
2 I don't believe that will have any
3 impact on this particular topic
4 today, but good to note for the
5 record.

6 MR. LAPINSKI: Very good.

7 BY MR. LAPINSKI:

8 Q. So now we're -- now we're
9 set, Ms. Gurowitz. Good morning. Have
10 you ever been deposed before?

11 A. No.

12 Q. Okay. I'm going to give you
13 a little bit of background and
14 instruction. This is just a question and
15 answer session that we're -- we're going
16 to be involved in today.

17 We're on video, but more
18 importantly, as we discussed a little
19 while ago, everything that's said is
20 being taken down stenographically. So
21 there's a couple different things that we
22 need to keep in consideration because of
23 that.

24 One, make sure that all of

1 your answers are verbal answers so that
2 the court reporter is able to take them
3 down.

4 Try and speak slowly and
5 clearly, and as you'll see as the day
6 goes by, I can't do that. I'm from New
7 Jersey, so I speak very quickly.

8 I'm going to assume that if
9 I ask a question and you answer it, that
10 you understood my question, so that if
11 for any reason you're not sure of a
12 question that I asked, please ask me to
13 repeat or rephrase the question. Is that
14 understood?

15 A. Yes.

16 Q. Very good. We're going to
17 try not to speak over each other as well.
18 If I'm asking a question, even if you can
19 anticipate the answer, please try to give
20 me an opportunity to finish it, and I
21 will try to do the same as far as your
22 answers are concerned, okay.

23 A. Yes.

24 Q. This is not an endurance

1 contest, it's not a marathon. If for any
2 reason you need a break, please let me
3 know, and then at an appropriate time
4 we'll make arrangements to be able to
5 take a break. Okay?

6 Ms. Gurowitz, I'm going to
7 hand to you what's been marked as
8 Exhibit 1.

9 (Document marked for
10 identification as Exhibit
11 Gurowitz-1.)

12 BY MR. LAPINSKI:

13 Q. And, Ms. Gurowitz, if you
14 would take that deposition -- the
15 Exhibit 1, and just look at it for a
16 minute.

17 This document is the
18 Plaintiffs' Steering Committee's second
19 amended notice of 30(b)(6) deposition of
20 defendant Johnson & Johnson. I'm going
21 to ask you if you've seen that deposition
22 notice before.

23 A. I have seen something
24 similar. I don't know that I've seen

1 this exact one.

2 Q. Okay. And do you recall
3 when the first time was that you saw that
4 notice?

5 A. It was a little bit ago,
6 maybe a week or two.

7 Q. Okay. And where did you
8 receive that document from?

9 A. I received it from Kristen.
10 (Document marked for
11 identification as Exhibit
12 Gurowitz-2.)

13 BY MR. LAPINSKI:

14 Q. I'm also going to now hand
15 you what has been marked as Exhibit 2.

16 Actually, if I could take
17 that back for a second.

18 A. Sure.

19 Q. I think what I did was --
20 I'm going to hand to you what I've marked
21 as Exhibit 2 and ask you to take a look
22 at that for a minute.

23 And Exhibit 2 is the
24 Plaintiffs' Steering Committee's second

1 amended notice of 30(b)(6) deposition
2 from defendant Johnson & Johnson Consumer
3 Incorporated.

4 Ms. Gurowitz, have you seen
5 that document before?

6 A. I have seen the back part of
7 this document. In terms of the front
8 part, I'm not sure how it differs from
9 the first one.

10 Q. When you say the back part
11 of the document, what are you referring
12 to?

13 A. The listing of all the
14 samples.

15 Q. Okay. And the front part,
16 you're not sure whether you've seen the
17 front part before?

18 A. Correct.

19 Q. Okay. Ms. Gurowitz, you
20 understand that you're testifying here
21 today on both -- on behalf of both
22 defendant Johnson & Johnson and defendant
23 Johnson & Johnson Consumer Incorporated?

24 A. Yes, I understand.

1 Q. And your testimony is being
2 offered today in your capacity as a
3 corporate representative of both of those
4 defendants, correct?

5 A. Correct.

6 Q. You understand that you're
7 not testifying here today as an
8 individual?

9 A. I understand that.

10 Q. Okay. And you understand
11 that your testimony today will be binding
12 upon both of those defendants?

13 A. I understand.

14 Q. As we move forward generally
15 I'll be referring to J&J or the Johnson &
16 Johnson defendants. And unless I
17 distinguish otherwise, can we just agree
18 that when I refer to J&J or I refer
19 Johnson & Johnson defendants, I'm
20 referring to both of the defendants
21 collectively?

22 A. Yes.

23 Q. Okay. And what I would ask
24 is that unless -- unless you distinguish

1 otherwise, I'm going to assume that your
2 references are references that relate to
3 both of the defendants. Is that a fair
4 assumption?

5 A. Yes.

6 Q. Okay. And then I would just
7 ask you if for any reason your answer is
8 going to be specific to Johnson & Johnson
9 or specific to Johnson & Johnson Consumer
10 Incorporated, that you let me know that
11 the response is specific to one of those
12 defendants.

13 A. I understand.

14 Q. Thank you. We're also going
15 to be talking today about talcum powder
16 and talcum powder products. And in
17 regard to this deposition, I'd like to
18 have an understanding, as long as you'll
19 agree, that when we reference talcum
20 powder products we're talking about
21 Johnson's Baby Powder and Johnson's
22 Shower to Shower product.

23 A. I understand.

24 Q. Okay. To the extent that

1 there is going to be discussion about a
2 single product, I will try to make clear
3 that I'm talking about a particular
4 product and I would ask that you do the
5 same, if that's okay.

6 A. I understand.

7 Q. If you would look at Page 1
8 of Exhibit 1. At the bottom of Page 1 it
9 has your name listed as a witness,
10 Ms. Gurowitz.

11 Do you see that?

12 A. Yes.

13 Q. And are you here today to
14 testify only as to Topic 3.4 of that
15 deposition notice?

16 A. Yes.

17 Q. Okay. And if you would
18 please turn to Page 17 of that deposition
19 notice. At the bottom of Page 17 if you
20 would look at Number 4, chain of custody
21 for identified samples. Are you here
22 today to testify as to the storage and
23 chain of custody for any and all samples
24 that have been identified as being in

1 defendant's possession?

2 A. Yes.

3 (Document marked for
4 identification as Exhibit
5 Gurowitz-3.)

6 BY MR. LAPINSKI:

7 Q. Ms. Gurowitz, I'm handing
8 you a document that has been marked as
9 Exhibit 3. And if you would please take
10 a minute to just review that document.
11 Exhibit 3 is the January 31st, 2018
12 agreed order and stipulation regarding
13 the Johnson & Johnson defendants'
14 production of talcum powder products and
15 talc samples.

16 If you'd let me know when
17 you're done reviewing that document.

18 A. Sure. Okay, I've reviewed
19 it.

20 Q. Very good. Is this the
21 first time that you've seen that
22 document?

23 A. Yes.

24 Q. Okay. Do you have an

1 understanding as to what that document
2 is?

3 A. Yes.

4 Q. Okay. What's your
5 understanding as to what that document
6 is?

7 A. My understanding is that
8 this document sets forth the process by
9 which identified samples of historic talc
10 products that have been discovered would
11 be sent to a lab and then divided. And
12 it talks about the presentation -- the
13 preservation of those samples, the
14 original containers, et cetera, et
15 cetera.

16 Q. Okay. Now at the back of
17 the order, Exhibit 3, there is a
18 list of -- there's a list of samples.
19 And what I'm going to represent to you is
20 that the list of samples that is
21 contained within the order is the same
22 list of samples that is in Exhibit 1, the
23 deposition notice for Johnson & Johnson
24 and 2, the deposition notice for

1 Johnson & Johnson Consumer Incorporated,
2 okay?

3 A. Yes.

4 Q. And those three lists are
5 the same. We're going to be dealing with
6 the list today, which I'd like to just
7 refer to it as the sample list if that's
8 okay, unless you have a different phrase
9 or different term that you use for it?

10 A. No, that's fine.

11 Q. Okay. In regard to the
12 sample list, did you play any role in
13 preparing that sample list?

14 A. I prepared a role in
15 preparing part of that sample list.

16 Q. And what part of that sample
17 list did you play a role in preparing?

18 A. That is the part of the
19 sample list that has as the leftmost
20 column museum number.

21 Q. And am I correct that the
22 section that has -- the section that
23 deals with museum number would actually
24 be Exhibit 2 of the sample list?

1 A. I'm not sure where it says
2 that.

3 Q. Well, it -- the prior page
4 that you were just looking at --

5 A. Exhibit 2.

6 Q. -- says Exhibit 2. And just
7 between you and I for purposes of today,
8 there's confusing marks all over these
9 things. Sometimes it's Exhibit 1,
10 sometimes it's Exhibit 2, A, B. But
11 we're going to try to stay on the same
12 page.

13 The important thing as far
14 as the current question is concerned, you
15 were responsible for -- strike that.

16 You played a role in
17 preparing the list that at the top says,
18 "Supplemental inventory of agreed upon
19 museum samples"?

20 A. Correct.

21 Q. Now, staying with that list
22 for now, could you please tell me the
23 purpose of the museum number that's on
24 the left-hand side. And specifically, as

1 an example, if you go down to the fifth
2 entry, which is 2014.001.0086.

3 Do you see that?

4 A. I see that.

5 So in -- in 2014 and 2015,
6 we had the collection of artifacts,
7 items, in the corporate archives museum
8 collection professionally catalogued for
9 the first time ever by a team of
10 professional archivists. It was part of
11 our project to restore the Johnson &
12 Johnson museum.

13 So those numbers represent
14 catalogue numbers, individual catalogue
15 numbers, so we can identify each artifact
16 in a new database that was created. The
17 2014 at the beginning represents the year
18 in which that artifact was catalogued.
19 Some of them will have a 2014 in the
20 front. Some of them will have a 2015
21 that represents the years 2014 and 2015.

22 Q. Okay. In regard to the
23 .001, what is the significance of that
24 number?

1 A. That is -- I looked back at
2 the documents that the archivists -- when
3 they created the numbers. I couldn't
4 find anything that documented the
5 significance of that number. It's just a
6 cataloguing system they used.

7 Q. And then how about the last
8 four digits set of numbers, and in the
9 example we're looking at it's .0086?

10 A. The last four digits
11 represent the individual -- the
12 individual unique catalogue number for
13 each particular item in the collection.
14 So that's -- that would be how we can
15 find it. So if you're looking for item
16 .0086, I could look that up in the
17 database and see where it was stored and
18 be able to access it.

19 Q. You just referred to a
20 database. Could you give me some more
21 detail as to the database you're
22 referring to?

23 A. It's actually an online
24 system that is used by small and midsize

1 museums to manage their collections. So
2 Johnson & Johnson has a contract with
3 them. And we utilize that software to
4 manage our collection.

5 Q. And for how long have you
6 been using that software?

7 A. Since about 2016 maybe.

8 Q. And was there any type of
9 software system used prior to 2016 in
10 order for Johnson & Johnson to manage
11 their archives?

12 A. There was not.

13 Q. What's the name of that
14 software system?

15 A. It's called TMS, which
16 stands for The Museum System.

17 Q. Ms. Gurowitz, what was the
18 role that you played in compiling this
19 list, this section of the sample list
20 that you said you played a role in?

21 A. This section. I was asked
22 to locate any Johnson's Baby Powder or
23 Shower to Shower products that were in
24 the corporate archives collection. So I

1 used key word searches to find them. And
2 these are the items that were identified.

3 Q. Can you explain to me what
4 the corporate archives collection is?

5 A. The corporate archives
6 collection is a collection of physical
7 artifacts which would be historical
8 products and objects, and also paper
9 artifacts that have been in our museum
10 building for many, many decades.

11 Q. When you did your -- when
12 you did your search, what keywords did
13 you use --

14 A. Johnson --

15 Q. -- to conduct your search?

16 A. Johnson's Baby Powder, Baby
17 Powder, JBP, Shower to Shower, and STS.

18 Q. You had also referenced
19 earlier that you had archive consultants
20 who helped you to develop your inventory
21 and archive list; is that correct?

22 A. That is correct.

23 Q. What was the name of those
24 archive consultants?

1 A. It's a company called
2 History Associates.

3 Q. And do you know where
4 they're based?

5 A. They're based somewhere down
6 around the Washington D.C. area.

7 Q. When you conducted your
8 search for samples that are included in
9 the list that you prepared, did your
10 search for samples go beyond the
11 Johnson & Johnson archive collection?

12 A. My particular search did
13 not. But the general search did.

14 Q. And what is your
15 understanding of what the general search
16 was?

17 A. The general search was -- a
18 request had gone out to locate any other
19 samples that might be in existence. And
20 so a search was conducted, I believe by
21 our law department initially, and
22 additional samples were discovered that
23 had been in offsite storage. There are
24 also samples from PTI, which is the

1 contract manufacturer for Johnson's Baby
2 Powder.

3 Q. Are you aware of any samples
4 other than the offsite samples that you
5 just referred to?

6 A. I am not.

7 Q. Were there any -- are you
8 aware of any samples that may have been
9 produced by other departments within
10 Johnson & Johnson that were not in any
11 type of offsite storage?

12 A. If I might ask, are you
13 asking about samples that are not part of
14 this list?

15 Q. Well, let's break that out.
16 First of all, in regard to samples that
17 are included on this list, are you aware
18 of any samples that were included on this
19 list that came from Johnson & Johnson
20 organizations other than the archives and
21 other than offsite storage?

22 A. There are a few. There are
23 four samples that came from a retired
24 employee in the United Kingdom.

1 Q. Would they be the Hopkins
2 samples?

3 A. Yes.

4 Q. Other than the Hopkins
5 samples, are you aware of samples coming
6 from anywhere else?

7 A. There are samples identified
8 that did come from offsite storage.
9 They're not finished products. They're
10 rocks. I -- in doing research to try to
11 track their origins, I understand that
12 before they went into offsite storage,
13 some of them were brought -- were brought
14 back to Johnson & Johnson Consumer by the
15 daughter of an employee who passed away
16 who had a collection of rocks in his
17 home.

18 Q. Are you able to identify
19 those samples that were brought back to
20 Johnson & Johnson by the daughter of a
21 former employee?

22 A. Not specifically. But they
23 would be among the items listed on the
24 offsite storage list as rocks.

1 Q. And are you aware of this
2 individual bringing any samples back to
3 Johnson & Johnson other than rocks?

4 A. From my conversation, it was
5 relayed to me that his daughter brought
6 rocks back. But he -- there may have
7 been some product samples stored in his
8 area that never left the company, but
9 they would have been part of the offsite
10 storage list.

11 Q. But you have no knowledge of
12 any specific sample that would have been
13 stored in his work area?

14 A. Let me -- actually, if I can
15 look through the list, I can see what --

16 Q. Sure. And as you look
17 through that list, are you looking
18 through the museum list or are you
19 looking through the offsite list?

20 A. I'm looking through the
21 offsite list.

22 Most of them I marked by
23 department, research and development, are
24 the rocks. But there are one, two,

1 three, four, five samples that are
2 labeled Johnson's Baby Powder that came
3 from research and development.

4 I was not able to -- we
5 were -- in my research into the origins
6 of these, I was not -- not able to track
7 down exactly who owned those samples
8 because it's beyond the memory of anyone
9 who is still at Johnson & Johnson. But
10 it was in the area, the research and
11 development area, the area that this
12 employee who passed away had been in.

13 And then they moved offices,
14 everything was boxed up, and then later
15 there was construction and everything was
16 sent to offsite storage. So there are --
17 there are a very few sample bottles from
18 that.

19 Q. So let me try and clarify
20 what was just said here. First of all,
21 in regard to the specific samples that
22 you're referring to, on the list there
23 are sample numbers. Can you identify for
24 me the sample numbers that you're

1 referring to?

2 A. Yes. The sample numbers are
3 JBP-001, 002, 003, 004, and 006.

4 Q. And it's your understanding
5 that those five samples are samples that
6 were provided by the daughter of a former
7 employee, correct?

8 MS. FOURNIER: Objection.

9 THE WITNESS: No. That is
10 not correct. It is my
11 understanding that these are
12 samples that were found in the
13 research and development area, the
14 area of the building that research
15 and development had occupied and
16 had been sent to offsite storage.

17 BY MR. LAPINSKI:

18 Q. The former employee who you
19 referenced earlier, what was that
20 employee's name?

21 A. His name was Bill Ashton.

22 Q. And what was Bill Ashton's
23 role while he was an employee at
24 Johnson & Johnson?

1 A. He was in research and
2 development. He was a scientist.

3 Q. And is it your understanding
4 that the five samples that we've been
5 talking about were found in Mr. Ashton's
6 office?

7 A. It is my understanding that
8 they were found in a common area that had
9 shelving and other means of storage that
10 had been at one point -- that he had been
11 located in or around this area.

12 Q. And approximately when were
13 those items moved from the common area to
14 offsite storage?

15 A. So they were, initially they
16 were moved, it is my understanding that
17 this whole group moved floors, and so
18 everything was boxed up, and the person
19 who boxed that up put them in -- kept
20 them in boxes in her office on another
21 floor.

22 And then around 2016, they
23 went to open plan work space with no
24 storage. And so everything had to be

1 moved to offsite storage.

2 Q. Okay. You said that samples
3 were boxed up because there was a move?

4 A. Correct.

5 Q. Did I understand you
6 correctly?

7 A. Yes.

8 Q. Okay. When was that move?

9 A. The move would have been
10 around -- it was related to me that it
11 was ten years prior to that. So it would
12 have been somewhere in the 2006 time
13 frame.

14 Q. And prior to -- prior to the
15 move, where were the offices located that
16 you're referring to?

17 A. Prior to the move to offsite
18 storage or the move between floors?

19 Q. No, now -- research and
20 development department -- strike that.

21 The research and development
22 department you indicated was in the
23 process of a move when they packed up
24 these samples, correct?

1 A. Yes.

2 Q. Okay. Where was the
3 research and development department
4 located prior to that move?

5 A. It was located at the
6 consumer company in Skillman, New Jersey.

7 Q. At J&J Consumer
8 Incorporated?

9 A. Yes.

10 Q. And was Mr. Ashton an
11 employee of Johnson & Johnson Consumer
12 Incorporated?

13 A. He was.

14 Q. You indicated that there was
15 a woman who had packed these samples into
16 boxes and kept them in her office,
17 correct?

18 A. Correct.

19 Q. Okay. Do you know the name
20 of that woman?

21 A. Yes.

22 Q. And what's that woman's
23 name?

24 A. Her name is Lorena Telofski.

1 Q. And is Ms. Telofski an
2 employee of Johnson & Johnson Consumer?

3 A. Yes.

4 Q. Okay. Do you know what role
5 she plays within Johnson & Johnson
6 Consumer?

7 A. I don't know her official
8 title, but she would be in the R&D group.

9 Q. And is she still a member of
10 JJCI's research and development group?

11 A. I believe she is, yes.

12 Q. Okay. If we continue to
13 look at the part of the sample list that
14 relates to offsite storage. If you go
15 down below the research and development
16 listings, the next listings are marketing
17 listings, correct?

18 A. Correct.

19 Q. Okay. Can you describe for
20 me where samples from the marketing
21 department came from?

22 A. As best as I've been able to
23 determine, the sample -- the samples that
24 are denoted as being from marketing, many

1 of them came from the original museum
2 collection that had been in New
3 Brunswick.

4 Q. How was a sample
5 distinguished from a marketing sample,
6 which would be listed in the offsite
7 storage listing, and a museum sample that
8 you would help to compile?

9 A. The ones that are labeled as
10 museum samples are currently in the
11 corporate archives in museum. The ones
12 that are labeled as marketing samples had
13 been sent to offsite storage in 1982.

14 Q. When they were sent to
15 offsite storage in '82, were they sent to
16 offsite storage by the J&J museum?

17 A. No, they were not.

18 Q. Were they sent to offsite
19 storage by members of the marketing
20 department?

21 A. They were sent to offsite
22 storage by the Johnson & Johnson Consumer
23 company.

24 Q. Staying with the list of

1 offsite storage -- the sample list for
2 offsite storage, there is also a
3 department name referenced there as QA,
4 which I think is towards the back.

5 If you look at the top of
6 the page, there is page references that
7 go up to Number 91. And if you look for
8 Page 37 of 91, there are references to
9 quality assurance.

10 Do you see that?

11 A. I see that.

12 Q. Okay. And that's for Sample
13 Numbers JBP-294 and 295. What does the
14 quality assurance reference refer to?

15 A. Those refer to two samples
16 that were discovered in offsite storage
17 that had been marked with the department
18 name of quality assurance.

19 Q. Were those two samples
20 stored offsite along with the marketing
21 samples that we just referred to?

22 A. I don't know whether they
23 were in the same box, but they were all
24 pulled from the offsite storage.

1 Q. Is it your -- is it your
2 understanding, Ms. Gurowitz, that all
3 samples of talcum powder products in the
4 possession of Johnson & Johnson and
5 Johnson & Johnson Consumer are contained
6 here in these two lists?

7 A. All the ones that were
8 located, yes.

9 Q. When was it that you were
10 first asked to work on the exhibit -- the
11 sample list that you worked on for the
12 museum?

13 A. Oh, it was a while ago. I'm
14 try -- it was months and months ago. So
15 I'm trying to -- trying to remember if it
16 was entirely in 2018 or it was a little
17 before. I feel like I've been working on
18 it for a long time. I'm trying to
19 remember. It was a while ago though.

20 Q. Okay. And since the time
21 that you first started working on --
22 strike that.

23 Since the time that you
24 finished this list, have you discovered

1 any additional samples?

2 A. There were some that were
3 donated. So we get a lot of donations.
4 And there were some that were donated.
5 They are marked at the beginning of the
6 museum list.

7 Q. So they are included on this
8 list?

9 A. Yes.

10 Q. Are you aware of any samples
11 that are not on this list?

12 A. I am not.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-4.)

16 BY MR. LAPINSKI:

17 Q. Ms. Gurowitz, I'm going to
18 hand to you a document that we are
19 marking as Exhibit 4.

20 Ms. Gurowitz, this document
21 was provided to us by counsel for
22 Johnson & Johnson. Is this your current
23 CV?

24 A. Yes.

1 Q. And when was this CV first
2 created?

3 A. This CV was first created
4 last year. I was asked to do it because
5 somebody had requested it and I kept it
6 as, and updated it as needed.

7 Q. And who had requested it?

8 A. Initially when we
9 re-launched the museum, there were a
10 number of news stories, and our media
11 team had asked, somebody had asked them
12 for a CV, so they asked me to create it.

13 Q. And when was the last time
14 this CV was updated?

15 A. Perhaps at the beginning of
16 2018.

17 Q. And you are a graduate of
18 Douglas College in New Brunswick?

19 A. That's correct.

20 Q. Okay. And your degree was
21 in medieval history?

22 A. That's correct.

23 Q. Fair to say that you don't
24 have any educational background in

1 science?

2 A. That's correct.

3 Q. You began working at
4 Johnson & Johnson in 1983?

5 A. Yes.

6 Q. And you've worked for
7 Johnson & Johnson for your entire career?

8 A. That's correct.

9 Q. And for purposes of
10 clarification, Johnson & Johnson -- is it
11 Johnson & Johnson company or is it just
12 Johnson & Johnson if we are trying to
13 distinguish between Johnson & Johnson and
14 Johnson & Johnson Consumer? That's a lot
15 of Johnsons in a row right there.

16 A. It's just Johnson & Johnson.

17 Q. Just Johnson & Johnson. You
18 were an employee of Johnson & Johnson
19 since 1983?

20 A. Yes. I was -- I was hired
21 full-time in 1988. Before then I was a
22 research assistant.

23 Q. And you're still employed by
24 Johnson & Johnson, correct?

1 A. That's correct.

2 Q. And your paychecks come from
3 Johnson & Johnson?

4 A. They do. Johnson & Johnson
5 Services, which is the legal entity.

6 Q. And you've been with that
7 same legal -- you've been with the same
8 legal entity, Johnson & Johnson,
9 throughout your entire career?

10 A. I have.

11 Q. And where is your office
12 located?

13 A. My office is located in our
14 museum building in New Brunswick.

15 Q. And is it fair to say or to
16 categorize your job as a historian for
17 Johnson & Johnson?

18 A. Yes.

19 Q. In the positions that you've
20 held at Johnson & Johnson during your
21 career, have you had any responsibilities
22 that are specific to talcum powder
23 products?

24 A. No, I have not.

1 Q. Are you personally
2 responsible for the -- any talc samples
3 that are maintained in the Johnson &
4 Johnson museum?

5 A. Yes.

6 Q. Okay. And for how long have
7 you had that responsibility?

8 A. Officially since about 2011.
9 Unofficially since 2006.

10 Q. Prior to 2011, was there
11 someone else who had responsibility for
12 maintaining the samples in the museum?

13 A. No. It was me. It was
14 not -- my title was different. So it was
15 part of my job, but not the entirety, if
16 that makes sense.

17 Q. I think it makes sense, but
18 let me just ask a question to clarify.

19 From 2006 forward, other
20 than yourself has there been anybody else
21 who has had responsibility for
22 maintaining the samples in the museum?

23 A. No.

24 Q. How about prior to 2006?

1 A. Yes.

2 Q. And who was responsible for
3 maintaining the samples prior to 2006?

4 A. It was the corporate
5 librarian in the corporate communication
6 group.

7 Q. And I'm sorry. Did you say
8 the corporate librarian in the corporate
9 communications group?

10 A. Yes.

11 Q. Okay. And who was that
12 corporate librarian?

13 A. It was a woman named
14 Elizabeth King.

15 Q. Do you know how long
16 Ms. King had that responsibility?

17 A. I do not.

18 Q. Is Ms. King still an
19 employee of Johnson & Johnson?

20 A. No, she's not.

21 Q. Okay. Is she retired?

22 A. Yes.

23 Q. And do you know
24 approximately when she retired?

1 A. I do not know, but it was --
2 it had to be more than ten years ago,
3 so...

4 Q. And do you know how long she
5 had worked for Johnson & Johnson before
6 she retired?

7 A. I do not know that.

8 Q. Are you able to give me an
9 estimate as to for how long prior to 2006
10 she was responsible for maintaining the
11 samples in the museum?

12 A. I do not know when she
13 started, but it would have been -- you
14 know, certainly through the 1990s, that
15 decade. And I'm not sure when she
16 started with that responsibility. But
17 certainly during the '90s.

18 Q. Do you have a recollection
19 when you started working there in 1983 as
20 to whether or not Ms. King was the
21 corporate librarian?

22 A. Yes, she was. So it would
23 have been certainly before that.

24 Q. What are your

1 responsibilities as it relates to the
2 maintenance of talc samples that are in
3 the museum?

4 A. Well, the talc -- the talc
5 samples are some of the many, many
6 artifacts in our museum. So since we had
7 them professionally catalogued in 2014
8 and 2015, they were put for the first
9 time in acid-free storage that's designed
10 to preserve them, so they're in high
11 density acid-free climate-controlled
12 storage.

13 And so my responsibility is
14 to maintain them in that storage. So
15 they're pretty much -- it's a
16 climate-controlled facility, our
17 archives. It's high density storage.
18 They are in acid-free boxes on shelves in
19 that storage area.

20 Q. And for how long have they
21 been in that type of storage condition?

22 A. Since 2016.

23 Q. And has that storage
24 condition a -- you've been using the word

1 museum. Is that storage condition a
2 physical museum where people are able to
3 see the different samples on display?

4 A. It is -- they are stored in
5 the building, but the samples in storage
6 are not on display.

7 Q. Are there any talc samples
8 that are on display?

9 A. There are two.

10 Q. And which two are they?

11 A. It is a container from 1896
12 and one from, I believe, maybe the early
13 1950s.

14 Q. And are those two contained
15 on the exhibit list?

16 A. I would have to look up
17 their number to confirm that.

18 Q. And are you able to do that
19 with the documents that you have in front
20 of you?

21 A. I am not.

22 Q. Okay. If you were going to
23 do that, how would you go about doing
24 that?

1 A. I would use the database
2 that sort of -- that runs our -- that
3 manages our archives. It's a cloud-based
4 system. So I would need my computer to
5 do that.

6 Q. So when you went into that
7 cloud based system, what would you do in
8 order to be able to identify and locate
9 the two samples that you're referring to?

10 A. I would do a keyword search
11 and I would look to see which ones in
12 location were noted on display.

13 Q. So your keyword search would
14 be "on display"?

15 A. My keyword search would be
16 Johnson's Baby Powder.

17 Q. And then once you did that
18 search, you would have an indication as
19 to which ones were on display as compared
20 to being in storage?

21 A. Yes. I would need to look
22 through each entry.

23 Q. Okay. I'm sorry. You said
24 one of them was a container from the

1 1950s?

2 A. But not -- it was from the
3 United Kingdom in the 1950s, I believe.
4 Both of the ones on display are just in
5 very fragile containers.

6 Q. The second one that you
7 referred to was a container as well,
8 correct?

9 A. Yes.

10 Q. And approximately when was
11 that from?

12 A. 1896.

13 Q. Are you aware of whether
14 there was any product in either of those
15 two containers?

16 A. Not offhand.

17 Q. Then the remaining samples
18 are not on display, they're in storage,
19 correct?

20 A. Yes. Some -- yeah, they are
21 in storage, some in our museum and some
22 were moved offsite to the lab. So you
23 have -- I mean, they're generally -- they
24 would be in storage, but they were moved

1 offsite to the laboratory.

2 Q. Okay. So just talking about
3 the museum samples, you have the two that
4 are on display. And the remainder at
5 some point in time were all in storage as
6 you had described it earlier in your
7 testimony, correct?

8 A. Correct.

9 Q. Some of them samples have
10 since been moved from that storage
11 facility to a lab?

12 A. Correct.

13 Q. Okay. What lab were they
14 moved to?

15 A. It's a lab in Monmouth
16 Junction.

17 Q. And were those, the samples
18 that you're referring to, were they moved
19 as part of the order that we looked at
20 earlier that is Exhibit 3?

21 A. Yes.

22 Q. Other than the samples that
23 were moved to the facility in Monmouth
24 Junction pursuant to the court order, are

1 you aware of any of this store -- these
2 samples in museum storage being moved
3 anywhere else?

4 A. No.

5 Q. Okay. Ms. Gurowitz, you are
6 here today in order to testify about the
7 chain of custody of these various
8 samples, correct?

9 A. Correct.

10 Q. Okay. Do you have any
11 personal knowledge of the chain of
12 custody of any of these samples?

13 A. I have personal knowledge of
14 the partial chain of custody of the ones
15 that are specifically marked museum
16 samples.

17 Q. And in what way did you
18 acquire that personal knowledge?

19 A. I worked with the team to
20 identify these samples and then to pull
21 them from the corporate archives. They
22 were packed up and sent to the lab.

23 Q. And what team did you work
24 with, when you refer to team?

1 A. I worked with the legal
2 team.

3 Q. Is that the Johnson &
4 Johnson legal team or is that Johnson --
5 strike that.

6 The legal team that you're
7 referring to, are they J&J employees?

8 A. They are outside counsel.

9 Q. Everybody who was on that
10 legal team is outside counsel?

11 A. Everyone who I worked
12 directly with.

13 Q. Is there anyone that you
14 worked indirectly with that was not
15 outside counsel?

16 A. Can I ask you to clarify?
17 You mean indirectly in packing up the
18 samples or indirectly in somebody said,
19 "Hey, these guys are going to come and
20 they want to pack up samples"?

21 Q. Well, we'll get -- we'll get
22 to the packing -- we'll get to the
23 packing of the samples. But I guess --
24 let me ask it this way.

1 How were you first put in
2 touch with the legal team?

3 A. Somebody from the Johnson &
4 Johnson law department contacted me.

5 Q. And what was the purpose
6 that they contacted you?

7 A. They said that they -- we
8 were asked to produce samples and
9 somebody would -- they would be putting
10 somebody in touch with me who would then
11 work with me to identify samples and then
12 pull them.

13 Q. And is that the only outside
14 counsel that you worked with in regard to
15 the talc samples? Strike that.

16 Is that the only non-outside
17 counsel person that you worked with in
18 regard to the collection of these
19 samples?

20 A. Yes.

21 Q. And what was that person's
22 name?

23 A. Kim Giganti.

24 Q. Ms. Gurowitz, is it fair to

1 say that you're not going to be offering
2 testimony today regarding the chemical
3 composition of the talcum powder
4 products?

5 A. Yes, correct, I will not.

6 Q. That would not be part of
7 your education?

8 A. No.

9 Q. And that would not be part
10 of your job function at J&J?

11 A. No.

12 Q. That would not be within
13 your area of expertise, correct?

14 A. That is correct.

15 Q. And it's also outside the
16 topic area for which you have been
17 designated today, correct?

18 A. Correct.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-5.)

22 BY MR. LAPINSKI:

23 Q. Ms. Gurowitz, I'm going to
24 hand to you what I've marked as

1 Exhibit 5. And if you would take a
2 minute to look at that.

3 A. Okay.

4 Q. And let me know when you're
5 ready to answer some questions in regard
6 to that exhibit.

7 A. I'm ready.

8 Q. Before we move on to this,
9 let me go back to the museum list if we
10 could just for a minute.

11 A. Sure.

12 Q. Am I correct that you had
13 testified that certain of the samples
14 that are maintained in the museum were
15 donated?

16 A. Some of them, yes.

17 Q. Okay. Other than the
18 samples that we had talked about that
19 came from Mr. Ashton, are you able to
20 identify which samples were donated?

21 A. Yes, the ones that were
22 donated when I was keeping track. There
23 may have been others that were donated
24 decades ago but records -- records were

1 not kept.

2 Q. But you have no knowledge,
3 other than while you were keeping track,
4 of any of the samples being donated?

5 A. Correct. Although it's
6 been, historically and today, lots of
7 people donate, you know, vintage
8 packaging to us.

9 Q. But you have no knowledge as
10 far as the samples that are listed on
11 here of any of them being donated, other
12 than the ones that you're going to point
13 to now?

14 A. Correct.

15 Q. And which ones are those?

16 A. Let me just turn to that
17 section.

18 Those are the first -- one
19 two -- those are the first four under --
20 on Page 2 of 8 for the museum samples.
21 The ones marked "New artifact donated on
22 9/19/17" and "New museum" 1, 3 and 4.

23 Q. Okay. And do you have
24 information as to who these specific

1 samples were donated by?

2 A. Most of them, yes. The New
3 Museum 3, the regular scent Shower to
4 Shower, somebody left that in an unmarked
5 envelope at the security desk in the
6 front of the museum. There was no name
7 on it, no note with it. And it was an
8 empty bottle. So I have no information
9 on who donated that.

10 Q. When was that?

11 A. That was sometime within the
12 last year. I don't have the date with
13 me. It was sometime within the last
14 year.

15 Q. Does the museum have a
16 policy in place for the receipt of
17 donated samples?

18 A. Yes.

19 Q. And is it a written policy?

20 A. It is not a written policy,
21 but generally when something is donated,
22 we make sure it's a Johnson -- a product
23 from the Johnson & Johnson family of
24 companies. We would want it to be in

1 good condition. And we would take the
2 donor name and information.

3 That being said, a lot of
4 things, like that Shower to Shower
5 bottle, do get left. They're just
6 dropped off with no -- you know, with no
7 information, no name, no note, no return
8 address on the envelope. So there's no
9 way to track it in those cases.

10 Q. And it was you who received
11 New Museum 3 which is the Shower to
12 Shower bottle we're talking about?

13 A. Yes.

14 Q. Okay. And what was it about
15 that particular bottle that made you
16 decide to keep it in the museum?

17 A. I had already been asked to
18 pull Johnson's Baby Powder and Shower to
19 Shower artifacts. So when that arrived,
20 I let the legal team know somebody just
21 donated this. And so I kept it.

22 Q. You said it was left in an
23 unmarked envelope at the --

24 A. Security desk.

1 Q. At the security desk. Is
2 that the museum security desk?

3 A. Yes.

4 Q. Okay. So Johnson & Johnson
5 museum has a -- has a separate security
6 desk from the rest of Johnson & Johnson
7 corporate?

8 A. Yes. Because it's a -- it's
9 in its own building, so...

10 Q. In order to be able to get
11 to the museum, would you first have to be
12 able to go through Johnson & Johnson
13 corporate security to get on the grounds?

14 A. No.

15 Q. So is the Johnson & Johnson
16 museum open to the public?

17 A. No, it is not.

18 Q. However, the public has the
19 ability to get to the museum and interact
20 with security personnel specifically
21 assigned to the museum?

22 A. That's correct.

23 Q. Okay. How about the other
24 three samples that we talked about that

1 were donated? What information can you
2 give me about the first one that was
3 donated on September 19, 2017?

4 A. That is -- it's listed as
5 cardboard metal. So if it's a cardboard
6 container, it's likely one of the rare
7 containers from the 1940s era, World War
8 II era, in which the packaging was
9 switched to cardboard because metal was
10 not available due to the war effort.

11 Q. Okay. And this was donated
12 in September of 2017, correct?

13 A. Correct.

14 Q. This would have gone through
15 your process, and you would have been the
16 one who accepted it into the museum,
17 correct?

18 A. Correct.

19 Q. Do you have the name of the
20 individual who donated that product?

21 A. I would have back at the
22 museum. I didn't know that I needed to
23 bring it, so I do not.

24 Q. And then same in regard to

1 New Museum 3, would you have available to
2 you the name of the person who donated
3 the item designated as New Museum 3?

4 A. No, I would not. That's the
5 one that came in anonymously in the
6 envelope.

7 Q. I'm sorry. That's the one
8 that we -- that we've been talking about.
9 How about New Museum 1.

10 A. New Museum 1. I would have
11 to look. Again, a lot of them just sort
12 of show up. Sometimes people leave a
13 note. Sometimes they don't. So I would
14 have to go back and look.

15 Q. Now, when you say a lot of
16 them just show up, we're only talking
17 about four. Right now we're limited to
18 these four that were donated.

19 A. Correct. We get other
20 donations, vintage Band-Aid brand
21 adhesive bandage tins for safety, things
22 like that.

23 Q. And then how about New
24 Museum 4? Do you have any knowledge as

1 to whether you know the person who
2 donated that particular product?

3 A. Again, I would need to go
4 look through the record. But -- but I --
5 as long as it's not donated anonymously
6 with no information, I do take the donor
7 name.

8 Q. Earlier you had testified
9 about the Johnson & Johnson librarian who
10 had responsibility for overseeing the
11 museum samples before you took on that
12 responsibility.

13 Do you recall that?

14 A. Yes.

15 Q. What's the difference
16 between Johnson & Johnson librarian and
17 you as the Johnson & Johnson historian?

18 A. I am a trained historian by
19 my educational background. I also -- I
20 also work to research and tell stories
21 from the company's -- the history of the
22 company.

23 I maintain our current
24 museum. The corporate librarian was a

1 librarian. She kept -- at the time they
2 had a library with books and periodicals.
3 She kept that. She would look up
4 articles in those periodicals for people
5 who needed to see them. And she also had
6 charge of what was in the old museum.

7 Q. And is corporate librarian
8 still a position within Johnson &
9 Johnson?

10 A. Not in corporate. It may be
11 somewhere in Johnson & Johnson around the
12 world, but not that I'm aware of.

13 Q. Okay. Looking at your CV
14 for a second, which is Exhibit 4. Your
15 first bullet point under your current
16 position, it references, "The Johnson &
17 Johnson Our Story At the Power House."

18 That's the current Johnson &
19 Johnson museum?

20 A. Correct.

21 Q. And where is that museum
22 located?

23 A. It is located on our campus
24 in New Brunswick, New Jersey.

1 Q. And how long has that museum
2 been open?

3 A. In its current state?

4 Q. Yes.

5 A. Since May of 2016 -- wait,
6 so this is 2018, which I can't -- I can't
7 believe. We opened in 2016.

8 Q. Okay. Going back to
9 Exhibit 5. Could you please tell me what
10 this document is?

11 A. Yes. This document
12 represents the research I conducted to
13 try to put together partial chains of
14 custody for the entirety of this list of
15 samples.

16 So these represent the
17 people I spoke to. My handwriting
18 represents the people I spoke to in the
19 different groups that represent the
20 groups -- if you look at the leftmost
21 column that says department name -- that
22 are represented by those groups.

23 So some of the samples were
24 marked marketing. So I asked to speak

1 with folks in the marketing group who
2 might be able to shed some light on the
3 chain of custody for those. The same
4 with R&D and quality, and also PTI.

5 I also spoke to Pam Downs
6 who does records management for our law
7 department because she had also sent out
8 a call for -- around Johnson -- around
9 Johnson & Johnson to try to identify any
10 samples that might be somewhere. And the
11 typed list represents the people that Pam
12 spoke with.

13 Q. Okay. So as far as this
14 e-mail is concerned, the people on this
15 e-mail who you spoke with are Pam Downs,
16 correct?

17 A. Yes.

18 Q. Lorena Telofski?

19 A. Correct.

20 Q. Sarita Finnie from
21 marketing?

22 A. Yes.

23 Q. Barbara Brewer from
24 marketing?

1 A. Yes.

2 Q. Mark Zappa from quality?

3 A. Yes.

4 Q. And Janet Stanish from PTI?

5 A. Yes.

6 Q. Okay. And you spoke with
7 them in order to be able to get chain of
8 custody information in regard to offsite
9 samples; is that correct?

10 A. That is correct.

11 Q. Okay. Did you have any
12 conversations with them in regard to any
13 of the museum samples that are contained
14 in the museum list?

15 A. No, I did not.

16 Q. Now, you referred to Janet
17 Stanish from PTI. What were the
18 conversations that you had with Janet
19 Stanish from PTI?

20 A. Well, so PTI is the one that
21 we actually can put a chain of custody
22 together for. So what I asked Janet --
23 and the PTI samples are the ones in the
24 back that just say lot number, sample

1 number.

2 And so what I asked -- so
3 PTI as the contract manufacturer, they
4 are required by their contract to keep
5 samples for either four years from date
6 of manufacture or one year after
7 expiration date, whichever comes first.

8 And so they send -- they
9 received a request to send their samples
10 to the lab. They did so.

11 So I asked Janet how the
12 samples were stored, whether they were
13 stored onsite at PTI or offsite, how they
14 sent -- packaged the samples up to send
15 to the lab, and also what it meant, on
16 the one that has the four columns across,
17 what the quantity column referred to.

18 Q. So I'm going to interrupt
19 you for a second because now you're
20 starting to refer to a document. And I
21 just want to make sure we are all looking
22 at the document?

23 A. Sorry.

24 Q. So when you said -- you were

1 referring to -- you asked her a question
2 about a column?

3 A. Yes.

4 Q. What document are you
5 looking at right now?

6 A. So that is in the documents
7 I have here. It's marked --

8 Q. The sample list?

9 A. The sample document. The
10 sample list. So this would be the
11 Exhibit C part of the sample list.

12 Q. And then for clarity, why
13 don't we work off of the numbers that are
14 at the top of the page where it says --
15 the one that I'm looking at right now is
16 Page 71 of 91. If you could refer to the
17 specific page that you were looking at.

18 A. Sure. I am looking at Page
19 64 of 91. It is part of that same
20 subset.

21 Q. And you said you had
22 questions in regard to the fourth column,
23 which was sample number?

24 A. So it was part of my

1 conversation with Janet, just to put
2 together -- because this area is the area
3 that we can do the most complete chain of
4 custody for. The others are just little
5 pieces. But I was not able to put
6 together full chains of custody.

7 So Janet said the samples
8 were stored at a storage room at the PTI
9 facility. They were stored in containers
10 on shelves.

11 The quantity column, the one
12 represents a sealed container of
13 Johnson's Baby Powder. So where they had
14 more than one sample, they were able to
15 send a sealed container. Where they only
16 had one, what they did was they took out
17 a portion of that and put it in a sealed
18 cup, which they labeled, that would be
19 represented by the columns that say --
20 the entries that say 0.5.

21 She said they then put them
22 on pallets and took them by truck to a
23 lab in Georgia where they initially
24 thought that the separation, the

1 splitting was going to happen. And then
2 when it was determined that it was going
3 to happen in New Jersey, they Federal
4 Expressed them from that lab to
5 Georgia -- from the lab in Georgia to New
6 Jersey, to the lab in New Jersey.

7 Q. Other than discussions that
8 you had with Ms. Stanish in regard to the
9 PTI samples, did you have any other
10 discussions with her at all?

11 A. No.

12 Q. When was it that you first
13 spoke with Ms. Stanish?

14 A. It was earlier this week.
15 So it was the very beginning of the week.

16 Q. For how long did you speak
17 with her?

18 A. It was 15 minutes, maybe.
19 It was a very short conversation.

20 Q. And is that the only time
21 that you spoke with her?

22 A. Correct, yes.

23 Q. And did you take any notes
24 during that particular conversation?

1 A. No, I did not.

2 MR. LAPINSKI: Why don't we
3 go off the record.

4 THE VIDEOGRAPHER: The time
5 is 10:36 a.m. We are off the
6 record.

7 (Short break.)

8 THE VIDEOGRAPHER: We are
9 back on the record at 10:52 a.m.

10 BY MR. LAPINSKI:

11 Q. Ms. Gurowitz, before the
12 break we were talking about several
13 samples that had been donated to the J&J
14 museum. Do you recall that?

15 A. Yes.

16 Q. And I believe you had
17 testified that to the extent you had
18 recorded the names of individuals who had
19 donated particular items, they would be
20 available to you in a database that you
21 maintain; is that correct?

22 A. Yes.

23 Q. And that's a cloud-based
24 database?

1 A. Yes.

2 Q. If on a break we were to
3 make -- give you access to a computer,
4 would you be able to access that database
5 and get the names of any individuals who
6 donated product?

7 Excuse me.

8 A. I have the -- I have the
9 connection from my laptop. So I wouldn't
10 be able to. So it's -- it's like a path,
11 a specific pathway. So I wouldn't be
12 able to without the login screens and
13 things like that.

14 Q. Okay. Before the break I
15 had given you Exhibit 5, which was an
16 e-mail that you were -- that was sent to
17 you in regard to potential individuals to
18 speak to about chain of custody, correct?

19 A. This e-mail was sent to me
20 as -- the typed part of the e-mail from
21 Pam Downs is a list of people that she
22 spoke to trying to find out if there were
23 any more samples around.

24 Q. Okay. And then the

1 handwritten names are the names of the
2 people that you spoke to, correct?

3 A. Correct.

4 Q. We were talking about your
5 conversation with Janet Stanish from PTI
6 before the break. You said you did speak
7 with miss Stanish once, correct?

8 A. Correct.

9 Q. And you spoke with her for
10 about 15 minutes?

11 A. About that, yes.

12 Q. Okay. Did you do any other
13 research in regard to the 400-plus PTI
14 samples that are identified as it relates
15 to chain of custody?

16 A. I just -- I just looked at
17 the list and then I spoke with Janet.

18 Q. If -- as we sit here today,
19 if I were to pick out a specific sample
20 from the list of PTI, would you be able
21 to discuss the chain of custody -- chain
22 of custody for a specific sample?

23 MS. FOURNIER: Objection.

24 THE WITNESS: As part of the

1 overall set, I would, because I
2 did talk to Janet about the chain
3 of custody for the collection of
4 samples.

5 BY MR. LAPINSKI:

6 Q. Okay. You had testified
7 that -- and why don't we -- why don't we
8 go to, so that we're looking at the list
9 of samples that had been provided by PTI.

10 A. Okay.

11 Q. And just for point of
12 reference, why don't we work off of the
13 same page that we were working off of
14 before, which I believe was Page 64.

15 A. I think we may be looking at
16 different iterations of this, because
17 mine says Exhibit 2.

18 Q. Mine is just stacked
19 differently. I think we're getting to
20 the same page.

21 A. Okay.

22 Q. Because this isn't my --
23 that's not my PTI stuff.

24 A. Oh, okay.

1 Q. So if you're looking at Page
2 64 of 91, the first lot number should be
3 2362 RB, correct?

4 A. Correct.

5 Q. Okay. So you had -- you had
6 testified that in the quantity column, if
7 there is a one listed in the quantity
8 column, then that means that PTI had at
9 least one sealed sample; is that correct?

10 A. That means that PTI had more
11 than one sealed sample.

12 Q. PTI had more than one sealed
13 sample, but they only produced one
14 sample, correct?

15 A. That is correct.

16 Q. Okay. Do you know how many
17 additional samples are in the possession
18 of PTI that have not been produced?

19 A. I do not know. I do know,
20 through my conversation with Janet, that
21 they are required by their contract with
22 Johnson & Johnson that they need to keep
23 samples of the finished product. So they
24 were -- so if they had more than one

1 sealed bottle of the finished product,
2 they could then send an entire sealed
3 bottle. So, for example, if they had two
4 bottles, hypothetically, of a product,
5 they could send one bottle to the lab and
6 they would keep one bottle as part of
7 their contractual obligations.

8 If they only had one bottle
9 total of that particular product, then
10 they had to divide it. And that's what
11 the 0.5's represent.

12 Q. And is it your understanding
13 that all of the samples that were
14 produced by PTI were finished products
15 that were in a sealed bottle?

16 A. No. That was not my
17 understanding. The ones on the pages
18 that have four columns across were the
19 finished product samples.

20 The ones on the pages that
21 only have three columns across --

22 Q. Okay. So I'll interrupt you
23 for a second, and let's turn. I'm
24 looking at Page 72 of 91 right now.

1 A. Okay. I can't used to
2 double-sided.

3 Q. I was just about to say,
4 I've made it a little more difficult on
5 you in order to save the trees. I have
6 them double-sided, so it's becoming a
7 little more difficult for you.

8 We're looking at Page 72 of
9 91?

10 A. Yes.

11 Q. And you started to provide
12 some testimony in regard to the samples
13 that are listed on the page with three
14 columns. Is this what you're referring
15 to?

16 A. That is what I'm referring
17 to.

18 Q. And what is your
19 understanding of these samples?

20 A. It is my understanding that
21 these samples are raw talc and not
22 finished product.

23 Q. Okay. If we can go back
24 to -- first of all, staying with PTI for

1 a minute. Is there anyone other than
2 Janet Stanish that you spoke with in
3 regard to PTI samples?

4 A. No. It was just Janet.

5 Q. Going back to Exhibit 5 and
6 the other people that you spoke with.
7 You wrote down Mark Zappa from quality,
8 correct?

9 A. Correct.

10 Q. Okay. And you had a
11 conversation with Mark Zappa in regard to
12 chain of custody?

13 A. I did.

14 Q. Okay. When was the first
15 time that you spoke with Mr. Zappa?

16 A. Oh, it was -- I don't have
17 the date. It was a few weeks ago.

18 Q. And for how long did you
19 speak with Mr. Zappa?

20 A. Again, it was not a
21 tremendously long conversation. It would
22 have been under 30 minutes.

23 Q. Okay. And what was the
24 substance of the conversation that you

1 had with Mr. Zappa?

2 A. So I was trying to piece
3 together chain of custody for the samples
4 that are marked quality assurance. And I
5 will turn to those and let you know what
6 page those are on as soon as I find them.
7 I'm sorry. I always forget to look on
8 the other side of the double-sided.

9 Q. If I can find it, I'll let
10 you know.

11 A. On Page 37 of 91.

12 Q. So on Page 37 of 91, there
13 are two samples that are listed as coming
14 from the quality assurance department; is
15 that correct?

16 A. That is correct.

17 Q. And that's Samples JBP-294
18 and JBP-295, correct?

19 A. That is correct.

20 Q. Are they the only two
21 samples that you spoke with Mr. Zappa
22 about?

23 A. Yes, I believe they are. I
24 think those are the only two marked

1 quality assurance on the list.

2 Q. And did you take notes while
3 you were speaking with Mr. Zappa?

4 A. No, I did not.

5 Q. So you spoke with Mr. Zappa
6 for about a half hour in regard to these
7 two samples, correct?

8 A. Yes.

9 Q. And what did Mr. Zappa tell
10 you in regard to these two samples?

11 A. Mr. Zappa said that these
12 particular samples are from 1984 so they
13 are beyond the memory of any employee
14 still in quality assurance, in that area.

15 They were found in -- they
16 were pulled from offsite storage in a box
17 of general products, not just Johnson's
18 Baby Powder, but other products and other
19 items. And the box was labeled quality
20 assurance.

21 I asked Mark if it were the
22 practice of quality assurance to send
23 samples to offsite storage. He said no,
24 it was not their practice. They did not

1 send samples to offsite storage. So he
2 was not sure how or why they initially
3 got in those boxes.

4 In the conversation, we
5 determined that it's possible that these
6 were just things that were boxed up from
7 the quality assurance area, whatever area
8 they occupied, and they found their way
9 into that box, and it was labeled quality
10 assurance because that's the area of the
11 building they had occupied.

12 Q. Okay. So did Mr. Zappa have
13 any other information in regard to these
14 two samples other than what you just
15 shared?

16 A. He did not.

17 Q. Did he give -- did he say
18 that he was aware that the bottles were
19 damaged in any way?

20 A. He did not mention that.

21 Q. Did he indicate at all that
22 he had knowledge of the bottles having
23 been tampered with at any particular
24 time?

1 A. He did not.

2 Q. Did he indicate that the
3 bottles had been previously donated by
4 someone outside of Johnson & Johnson?

5 A. He did not. Again, they
6 were so old that they were beyond the
7 memory of anyone -- of certainly him and
8 anyone in that area. Nobody was --
9 nobody was -- is currently there who was
10 there when these were sent to offsite
11 storage.

12 Q. Did Mr. Zappa refer you to
13 any documents during your conversation?

14 A. No, he did not.

15 Q. Did he send you any
16 documents prior to or subsequent to your
17 conversation?

18 A. He did not.

19 Q. And you said you didn't take
20 any notes when you spoke with Mr. Zappa?

21 A. I wrote down his name.

22 Q. Did the two of you discuss
23 anything else?

24 A. No.

1 Q. You also noted here that you
2 spoke with Barbara Brewer from marketing,
3 correct?

4 A. That is correct.

5 Q. And before we get to
6 Ms. Brewer, did Mr. Zappa indicate to you
7 that there was anyone else from within
8 marketing who may have -- I'm sorry.

9 Did Mr. Zappa indicate to
10 you that there was anyone else within the
11 quality department who may have
12 information in regard to these two
13 samples?

14 A. No, he did not.

15 Q. Now, you wrote down that you
16 had also spoken with Barbara Brewer from
17 the marketing department, correct?

18 A. That is correct.

19 Q. And how many times did you
20 speak with Ms. Brewer?

21 A. Just once.

22 Q. Okay. And when was it that
23 you spoke with Ms. Brewer?

24 A. It was a few weeks ago.

1 Q. Okay. For how long did that
2 conversation last?

3 A. Anywhere between half hour,
4 45 minutes.

5 Q. And what was the subject of
6 your conversation with Ms. Brewer?

7 A. An attempt to piece together
8 chain of custody for the offsite samples
9 that are labeled marketing as department
10 name.

11 Q. And looking at the list,
12 would you agree that the majority of
13 offsite samples are samples that fall
14 under the marketing department?

15 A. Yes.

16 Q. Okay. And what was the
17 substance of the conversation that you
18 had with Ms. Brewer?

19 A. The substance of the
20 conversation was that these were sent to
21 offsite storage so long ago that they
22 were again beyond the memory of any
23 employee still there. And Barbara Brewer
24 is an employee who has been with the

1 company a long time. And it was still
2 outside of her memory as an employee.

3 So -- but, so we -- we
4 discussed that. She did say that it is
5 not the practice of marketing to send
6 samples to offsite storage and that these
7 boxes were labeled marketing, but since
8 it is not part of marketing's policy and
9 practice to send samples to offsite
10 storage, she doubted whether the
11 marketing group that long ago had sent
12 them.

13 And so that was part of my
14 attempt to piece together the chain of
15 custody. And we had determined that
16 probably the bulk of the samples that are
17 labeled marketing had been separated from
18 the old Johnson & Johnson museum in 1982,
19 sent back to the consumer company, and
20 then somebody there sent them to offsite
21 storage, and they had gotten -- they were
22 labeled marketing likely because they
23 were product samples.

24 Q. You say that Ms. Brewer

1 indicated that it was not the practice of
2 the marketing department to send samples
3 to offsite storage; is that correct?

4 A. That is correct.

5 Q. Do you know whether or not
6 it is the practice of the marketing
7 department to maintain product samples?

8 A. I do not. I think she said
9 if they maintained something, it would be
10 for really -- I was trying to -- since we
11 were trying to track chain of custody, it
12 was not part of the discussion because I
13 was concerned with these particular
14 samples. She said -- she did say that it
15 was not their practice to send them to
16 offsite storage.

17 Q. And what else did you
18 discuss with Ms. Brewer?

19 A. It was -- that was it. Just
20 around these samples and how they had
21 gotten into offsite storage originally.

22 Q. Okay. It indicates here
23 that you also spoke with Ms. Finnie from
24 the marketing department?

1 A. That is correct.

2 Q. Okay. And did you speak
3 with Ms. Finnie before or after you had
4 spoken with Ms. Brewer?

5 A. At the same time on the same
6 call.

7 Q. The two of them were on the
8 same call?

9 A. Correct.

10 Q. Okay. And what information
11 did Ms. Finnie share with you in regard
12 to marketing samples?

13 A. Sarita Finnie has a much
14 shorter tenure with the company. So she
15 asked Barbara Brewer, who is a long-term
16 employee, to be on the call, because
17 Sarita did not have any information about
18 the samples.

19 Q. And it was -- if I
20 understand correctly, Ms. Downs had
21 recommended that you contact either
22 Sarita Finnie or Katie Decker from
23 marketing in regard to chain of custody;
24 is that correct?

1 A. That is not --

2 MS. FOURNIER: Objection.

3 THE WITNESS: That is not
4 correct. The typed list
5 represents people that Pam Downs
6 reached out to because she thought
7 they might know of samples.

8 BY MR. LAPINSKI:

9 Q. Okay. When you reached out
10 to the marketing department, who was the
11 person in the marketing department that
12 you first reached out to?

13 A. I asked the legal team if I
14 could find, if I could speak with
15 somebody in the marketing group. Sarita
16 who leads that team was identified. And
17 then she asked Barbara to participate
18 because she has a much shorter tenure
19 with the company and she did not have any
20 information. And she was hoping that
21 Barbara would.

22 Q. And do you know what
23 Ms. Finnie's title is?

24 A. I don't know exactly. We

1 could -- we could find out for you.

2 Q. And do you know what
3 Ms. Brewer's title is?

4 A. I don't know her exact
5 title, but she's an administrative
6 assistant.

7 Q. Was there anyone else on the
8 call other than Ms. Finnie and Ms. Brewer
9 when you spoke with them?

10 A. Just one of the legal folks
11 who facilitated the call.

12 Q. Okay. Was it an outside
13 attorney or was it an inside attorney?

14 A. Outside.

15 Q. Do you know who that
16 attorney was?

17 A. It was Andrew Karp.

18 Q. Okay. Did Ms. Finnie or
19 Ms. Brewer share any other information
20 with you other than what we discussed?

21 A. No.

22 Q. You also indicate here that
23 you spoke with Lorena Telofski from
24 research and development; is that

1 correct?

2 A. That is correct.

3 Q. Okay. And when did you
4 first speak with Ms. Telofski?

5 A. It was a few weeks ago.

6 Q. And for how long did that
7 telephone conversation last?

8 A. Again, probably somewhere
9 between half hour, 45 minutes.

10 Q. Taking a step back to the
11 marketing people that we spoke about.
12 Did the marketing people send you any
13 documents in regard to -- in follow-up to
14 the conversations that you had?

15 A. They did not.

16 Q. Did they send you any
17 documents prior to the conversation that
18 you had?

19 A. They did not.

20 Q. Okay. Going back to Ms.
21 Telofski. You said you spoke with her a
22 couple weeks ago?

23 A. Yes.

24 Q. And the conversation lasted

1 about a half hour?

2 A. Somewhere between half hour,
3 45 minutes.

4 Q. Okay. And what did you
5 speak to Ms. Telofski about?

6 A. I was attempting to try to
7 piece together a chain of custody for the
8 samples on the list that are marked
9 research and development. That would
10 start on Page 18 of 91.

11 Q. What information did
12 Ms. Telofski give you in regard to these
13 samples?

14 A. Ms. Telofski, the first set
15 of samples are actual Johnson's Baby
16 Powder. Again, they were -- they were
17 much older, and she didn't have
18 information specifically. She did say
19 that research and development again did
20 not have a practice of sending things to
21 offsite storage. She did say that the
22 ones that were not United States products
23 would likely have been kept by someone as
24 souvenirs because it was interesting

1 because they were from outside of the
2 U.S.

3 Q. And just for purposes of
4 clarification, the first five research
5 and development samples that we're
6 talking about which are JBP-1, 2, 3, 4
7 and 6 are samples which originated from
8 Mr. Ashton's office; is that correct?

9 A. Or the area around
10 Mr. Ashton's office. There was, as I
11 understand it, an open common area. And
12 these things were in that space.

13 Q. Did Ms. Telofski -- did
14 Ms. Telofski indicate that she had any
15 knowledge that the samples -- the
16 research and development samples were
17 part of any type of research project?

18 A. She did not.

19 Q. If you turn to Page 46 of
20 91.

21 A. I'm not seeing it. I'm
22 sorry.

23 Q. Take your time.

24 A. They've gotten maybe a

1 little out of order. 48 of 91?

2 Q. 46.

3 A. 46. Okay.

4 Q. And at the bottom of Page
5 46, there's an entry for a sample from
6 the research and development department
7 and it starts RR-001; is that correct?

8 A. That is correct.

9 Q. And do you know what the RR
10 designation refers to?

11 A. I do not.

12 Q. Do you know where the RR
13 designation came from?

14 A. I do not. But I believe the
15 sample number, those were -- the legal
16 team that collected these, those are
17 their sample numbers. So the one
18 directly above RR-001, STS would be
19 Shower to Shower, but I don't know what
20 the RR stands for.

21 Q. And did you inquire at all
22 from Ms. Telofski what that represented?

23 A. I did not, because it was
24 pretty clear from the label column that

1 we were talking about rocks.

2 Q. Okay. And is it your
3 assumption that all of these samples that
4 are labeled with a sample number
5 beginning with RR refers to a raw rock?

6 A. Yes, they would appear to do
7 that.

8 Q. And is that your testimony,
9 that they all refer to raw rock?

10 A. If that's -- they all refer
11 to -- they all refer to rocks, yes.

12 Q. Okay. And what was the
13 specific testimony -- what was the
14 specific information that Ms. Telofski
15 had given to you?

16 A. Ms. Telofski said that these
17 rocks were in that common area that
18 Mr. Ashton, who retired -- she said he
19 was active I believe during the '60s,
20 '70s and part of the '80s, retired, and
21 then subsequently passed away.

22 He collected things when he
23 traveled around the world. And the rocks
24 were part of his collection.

1 Q. And did Ms. Telofski tell
2 you anything else in regard to the
3 samples that are from the research and
4 development department?

5 A. She said that after
6 Mr. Ashton passed away, that his daughter
7 said -- came with a box of rocks that he
8 had at his house and gave them to
9 Ms. Telofski.

10 Q. And from this list, are you
11 able to identify which samples would have
12 been samples that came from Mr. Ashton's
13 daughter's home?

14 A. I am not.

15 Q. Okay. Did you make any
16 further inquiry in regard to that?

17 A. About which samples came
18 from his daughter?

19 Q. Yes.

20 A. It was relayed to me that
21 they were just put in boxes with the
22 other rocks.

23 Q. Do you know what
24 Mr. Ashton's daughter's name is?

1 A. I do not.

2 Q. Did you speak with
3 Ms. Telofski in regard to any samples
4 other than those from the research and
5 development department?

6 A. No, I did not.

7 Q. Is there anything else that
8 you discussed with Ms. Telofski that you
9 have not yet mentioned?

10 A. Just sort of the movement of
11 these items, the rocks that were not
12 brought back by Mr. Ashton's daughter
13 were in -- on shelves, you know, some
14 sort of storage unit in sort of the
15 common area that had been outside of the
16 area -- around the area that his office
17 had been in.

18 And then Ms. Telofski had to
19 box these up at some point somewhere
20 around 2006 when her group moved floors.
21 She boxed them up and they sat in boxes
22 in her office for quite a number of
23 years. Around the 2016 time frame, they
24 were informed that there was going to be

1 construction on that space in the
2 building and it was moving to open plan
3 work space which would have no storage.
4 And at that time these items were sent to
5 offsite storage.

6 Q. And you said that was around
7 2016?

8 A. Yes. In that time frame.

9 Q. Okay. And then lastly, you
10 indicated that in preparation you spoke
11 with Pam Downs, correct?

12 A. I spoke with -- Pam Downs
13 was the next-to-last conversation I had,
14 yes.

15 Q. Okay. And when did you
16 speak with Ms. Downs?

17 A. Maybe a week or two ago.

18 Q. And for how long did you
19 speak with Ms. Downs?

20 A. Probably less than
21 30 minutes.

22 Q. Okay. And what was your
23 conversation with Ms. Downs in regard to?

24 A. My conversation with Pam

1 Downs was whether she had identified
2 any -- any other samples or she, in this
3 list of people that she spoke to, that
4 they had -- they were able to provide any
5 information regarding the chain of
6 custody for the samples on this list.

7 Q. And did she give you any
8 additional information?

9 A. She said they -- the folks
10 that she spoke to were not able to
11 identify any other samples, and they had
12 no information about chain of custody. I
13 mean other than -- you know, because she
14 spoke with some of the folks I spoke
15 with, although I spoke with the folks
16 before I spoke with Pam. So other than
17 what was relayed to me by them.

18 Q. So it's your understanding
19 that other -- other than the people who
20 you spoke with, there's no one who has
21 any knowledge as it relates to chain of
22 custody of the offsite samples?

23 A. That is my understanding.

24 Q. Now, you said that Pam Downs

1 was the next-to-last person that you had
2 spoken with?

3 A. Correct.

4 Q. Is there someone else that
5 you spoke with who we've not discussed?

6 A. No.

7 Q. Okay. What did you mean
8 when you said she was the next to last
9 person you spoke with?

10 A. I spoke with Janet Stanish
11 from PTI after I spoke with Pam.

12 Q. Okay. So you're talking
13 just in the chronology of things,
14 Ms. Downs was the second-to-last person
15 that you had spoken with?

16 A. Correct.

17 Q. Okay. Ms. Gurowitz, when
18 were you first contacted about this
19 deposition?

20 A. Oh, I'm trying to think.
21 I'm trying to think back of the entire
22 chronology of pulling the samples and the
23 deposition.

24 It was a few weeks ago. I'm

1 sorry. I don't remember the exact date.

2 Q. By whom were you contacted?

3 A. I was contacted by the
4 outside legal folks who were working with
5 us.

6 Q. Okay. Is providing
7 testimony regarding chain of custody a
8 normal part of your job function?

9 A. I've never done it before.

10 Q. Okay. Have you in the past
11 ever had to provide any type of an
12 affidavit in regard to the chain of
13 custody for any type of Johnson & Johnson
14 product in your capacity as the
15 historian?

16 A. I have not had to provide an
17 affidavit.

18 Q. And as we've discussed,
19 you've had to educate yourself in order
20 to prepare for the testimony today,
21 correct?

22 A. That is correct.

23 Q. Okay. Other than talking to
24 the people who we just spoke with, what

1 have you done in order to prepare to
2 testify today?

3 A. I looked at documents that
4 were in the corporate archives.

5 Q. And did you -- did you
6 search out those specific documents in
7 order to educate yourself?

8 A. Yes, I did.

9 Q. Okay. And what documents
10 did you look at?

11 A. I believe you have them.
12 There is an internal memo from about the
13 1981, 1982 time frame that said that the
14 law department, which was in charge of
15 the old Johnson & Johnson museum, was
16 going to disband and close the museum and
17 eliminate the collection because they no
18 longer had space. They were keeping it
19 for the purposes of keeping a trademark
20 history. So, you know, the changes over
21 time in the labels and the packaging and
22 the colors used, things like that.

23 And so this memo said that
24 they would then be sending the relevant

1 artifacts back to the operating
2 companies.

3 Q. And what other documents did
4 you look at?

5 A. There was another document
6 that, from the same time frame from the
7 then head of public relations who said
8 whatever does not get sent back we're
9 going to keep a part of this collection,
10 because it helps us tell the story of the
11 history of Johnson & Johnson.

12 Q. Now, when you went to look
13 at documents in the corporate archives,
14 what was the process -- what was the
15 process that you used when you were in
16 the corporate archives? What was it
17 first that you were looking at where you
18 then came upon these documents?

19 A. So what I was trying to do
20 is I was trying to track -- piece
21 together as much of a chain of custody as
22 was possible for the -- for the sample
23 items labeled marketing that had been in
24 offsite storage, because most of them,

1 many or most of them had at one point
2 been in the old museum collection.

3 So I went and looked at
4 documents in the archives that related to
5 the historical management of that old
6 museum and found that document from about
7 the 1982 time frame saying that the
8 museum, the collection would be disbanded
9 and the artifacts, the items would be
10 sent back to the operating companies.

11 Q. Okay. Now, when you talk
12 about looking at documents in the
13 corporate archives, is this something
14 that you're able to do by going online on
15 an internal J&J database to access the
16 documents --

17 A. It is --

18 Q. -- or are you going to a --

19 A. It's that --

20 Q. -- file and pulling a file?

21 A. It's that cloud-based
22 database, which tells me the location of
23 what I'm looking for. And then I would
24 go back into the archives, look for the

1 relevant shelf and acid-free file box and
2 then pull those.

3 Q. So you said that the cloud
4 is able to tell you where to go for what
5 you're looking for. When you started the
6 process, what was the -- what was the
7 search term or terms that you used in
8 order to start this document search
9 process?

10 A. So those -- there are a few
11 boxes, and when I say boxes, they are
12 slim boxes of museum records, files, and
13 so I looked for those.

14 Q. So this is before you
15 went -- before you went online, you
16 looked at a physical box of documents?

17 A. So I went into the database
18 that helps us manage the collection,
19 tells us where everything is.

20 Q. Okay.

21 A. I looked up the location,
22 and then pulled those boxes and found
23 that document that I had mentioned
24 before.

1 Q. So just so that I can
2 clarify. When you went into the database
3 in order to look for the boxes, what were
4 the search term or terms that you used in
5 order to be pointed to those boxes?

6 A. So I used museum management
7 records as the search term, because it
8 would have been part of the museum
9 management records.

10 Q. And that search term led you
11 to -- I'm sorry -- you said one or two
12 boxes?

13 A. Yes. It's just a very few
14 boxes. And when I say boxes I'm not
15 talking about, you know, those big sort
16 of banker boxes, file boxes. These are
17 sort of slim, acid free storage boxes in
18 which there are acid free file folders
19 and the documents were in those folders.

20 Q. And how many documents in
21 total do you think you reviewed in
22 preparation for the deposition?

23 A. I -- there were two that
24 applied specifically to putting together

1 chain of custody, so those were the ones
2 that I reviewed.

3 Q. And they're the two
4 documents that you referenced, the 1982
5 document and the memo in and around that
6 time?

7 A. Yes.

8 Q. Okay. Were there any other
9 documents that you reviewed that you did
10 not consider to be relevant?

11 A. There were other things that
12 had complete non-relevance. They were,
13 you know, research inquiries from
14 students that date back, you know, things
15 like that, completely irrelevant.

16 Q. Okay. So approximately how
17 many pages in total did you review as you
18 were looking for materials of relevance
19 to you?

20 A. So I looked through the file
21 folders in those boxes. I don't have a
22 count on pages. But those were the two
23 documents that were of relevance.

24 Q. Okay. They're the only two

1 documents that you feel provided you with
2 any type of information that you're able
3 to share here today?

4 A. Regarding the dispersal of
5 the collection. Again, I was trying to
6 piece together as much of a chain of
7 custody as I could for the ones that were
8 labeled marketing on the list.

9 Q. Okay. And as far as the
10 other samples that are on the list,
11 whether for the offsite samples or for
12 the museum samples, was there any
13 other -- any other work that you did in
14 order to prepare yourself?

15 A. I spoke to people who I had
16 hoped would have information about those
17 particular items.

18 Q. Okay. Now, how about within
19 the museum itself. Did you speak with
20 anybody in the museum in regard to chain
21 of custody and samples?

22 A. It's just me, so...

23 Q. Okay. So other than doing a
24 search for and pulling some documents,

1 the remainder -- and speaking to the --
2 speaking to the people who you spoke
3 with, there is no other work that you did
4 in preparation for the deposition?

5 A. That was it. There's one
6 other set of documents that was provided
7 to me. It was a set marked Drawer 5E
8 that seems to represent at least some of
9 the items that are in the -- listed as
10 marketing in the samples. And so I could
11 not make a direct correlation with
12 everything on that list with everything
13 here. But there's some that you can say,
14 okay, yes, so these do look like they
15 came from the collection of the old
16 museum, were sent back to the operating
17 unit, and the operating unit sent them to
18 offsite storage.

19 Q. And by whom was this Drawer
20 5E file provided?

21 A. It was -- it was obtained as
22 part of this process. And so it was
23 provided so that I could try to -- you
24 know, I was -- in doing research, it was

1 provided so that I could try to piece
2 together, again, chain of custody for the
3 items marked marketing.

4 Q. Okay. You said it was
5 obtained as part of this process. Who --
6 let's go back to my original question.
7 Who gave it to you? Who gave the Drawer
8 5E file to you?

9 A. So I believe originally the
10 outside legal folks.

11 Q. Okay. And did you have any
12 role in compiling the information that
13 was in drawer -- the drawer 5E file?

14 A. No. It very much predates
15 my tenure at Johnson & Johnson.

16 Q. Okay. But the file is a
17 Johnson & Johnson file?

18 A. What they were -- it's -- it
19 was -- it was -- there were copies of old
20 typed transfer sheets to transfer the
21 items to offsite storage from about 1982.

22 Q. And other -- other than the
23 old typed transfer sheets, was there
24 anything else in that -- in that

1 particular file?

2 A. I believe that was it.

3 Q. And did you meet with
4 counsel in preparing for today's
5 deposition, with your -- the attorneys
6 for Johnson & Johnson?

7 A. Yes.

8 Q. Okay. When was the first
9 time that you met with them?

10 A. To prepare for the
11 deposition --

12 Q. Correct?

13 A. -- or to pull the samples?
14 I'm trying to remember
15 exactly. Maybe in the past few weeks to
16 month or so. It was after I was notified
17 that I would be deposed.

18 Q. Okay. And how many times
19 did you end up meeting with counsel?

20 A. I don't have a -- it would
21 be single digits, but I don't have -- I
22 don't know if I could give you an exact
23 number.

24 Q. Okay. But less than ten?

1 A. Yeah.

2 Q. Okay. And approximately how
3 long did you meet with them each time you
4 met?

5 A. Two were most of the day
6 meetings. The other ones were short.
7 Maybe just an hour, few hours, hour or
8 so.

9 Q. And telephone or in person?

10 A. Both.

11 Q. Okay. And if you could just
12 make sure to speak up a little bit.

13 A. Sure. I'm sorry.

14 Q. That's quite all right. I
15 want to make sure we're able to hear
16 everything.

17 Now, you mentioned that that
18 you met with counsel in order to prepare
19 for the deposition. But you also had
20 meetings with counsel for purposes of
21 gathering samples, correct?

22 A. That is correct.

23 Q. Okay. What role did you
24 play in gathering samples?

1 A. I gathered the samples that
2 were specifically from the current
3 museum, the ones on -- that are marked
4 museum collection. I can give you a page
5 number on which to start.

6 So the ones -- it should --
7 it starts with Page 2 of 8, page ID is
8 13369.

9 So that was the ones that --
10 where the leftmost column is museum
11 number.

12 Q. Okay. And you were
13 responsible for gathering all of these
14 samples and providing them to counsel?

15 A. Yes.

16 Q. Okay. Did you also -- were
17 you also responsible for packing these
18 samples?

19 A. I worked with the legal
20 folks on that, just because it's a
21 massive job, and it helps if there's more
22 than one person doing it.

23 Q. And what was -- what was the
24 process that was followed in preparing

1 all of these samples for shipment?

2 A. So I pulled them from the
3 archival storage, and I wear gloves,
4 obviously, when I handle fragile and old
5 artifacts.

6 They were then taken out of
7 the acid free tissue paper that they were
8 wrapped in out of the archival boxes.
9 They were noted by the legal folks. They
10 were put into boxes for transport to the
11 lab. And then they were -- each item was
12 checked off on a transfer sheet and
13 signed and initialed.

14 Q. So when you say they did --
15 when you say they were noted by counsel,
16 what do you mean noted by counsel?

17 A. So there are -- and I
18 apologize if I'm not using the right
19 name -- transfer sheets --

20 Q. Okay.

21 A. -- that you have to -- like
22 a chain of custody sheet. And so it was
23 that with -- you know, it had a listing
24 of, this is X, Y, Z, this is the number

1 A, B, C. And so I would need to initial
2 next to each one, yes, we put this in
3 this box, took it from this box, put it
4 in this box.

5 Q. And was it you who prepared
6 each sample for shipping?

7 A. When you say prepared for
8 shipping, what do you mean?

9 Q. You said, as you had
10 testified to, you take the -- you wear
11 gloves when handling the samples in order
12 to be able to, I would, assume have a
13 level of care when you're handling the
14 samples, correct?

15 A. Correct. Well, skin oils
16 can damage a fragile old artifact, so you
17 don't want to touch it directly.

18 Q. Okay. So now I want to
19 transfer that over to the packaging
20 process when we're getting ready to ship.

21 Did you oversee or do the
22 packaging of the products when they were
23 being prepared for shipment?

24 A. So I put them, with the

1 assistance of counsel, again it was a
2 massive job. We put them in -- took them
3 out of the archival storage, put them in
4 boxes, signed the transfer sheet.
5 Counsel then took the boxes.

6 Q. And is there packing around
7 each of the samples when they were in the
8 boxes?

9 A. There was some -- not around
10 each individual sample. But to prevent
11 them from jostling around.

12 Q. Okay. How was each sample
13 stored at the museum when it's in --
14 strike that.

15 You had said that for each
16 sample you would take it out of an
17 acetate wrapping, correct?

18 A. Acid-free tissue paper.

19 Q. Acid-free tissue paper. So
20 when it's stored, it's in acid-free
21 tissue paper, correct?

22 A. Most of them, yes. The ones
23 that would have acid-free tissue paper
24 are some of the older ones where the

1 printing was done on the metal container
2 because it might -- you know, you don't
3 want the paint to flake off at a certain
4 point in time. So the ones that
5 didn't -- were not completely wrapped in
6 acid-free tissue paper had a spacer of
7 acid-free tissue paper in between, in the
8 boxes.

9 Q. In the boxes that are
10 packed?

11 A. In the -- in the archival
12 boxes in the archives.

13 Q. In the boxes where they're
14 stored?

15 A. Yes.

16 Q. Okay. When they're taken
17 out of those storage boxes and put into
18 the packing boxes, was each bottle
19 also -- each sample separated from the
20 other samples?

21 A. Some were, some were not. I
22 believe they were just packed upright so
23 that they wouldn't jostle.

24 Q. Okay. Let's talk about the

1 J&J museum. I think you had testified
2 that there is a new J&J museum that
3 opened in May of 2016; is that correct?

4 A. Correct.

5 Q. Okay. Is that the only
6 Johnson & Johnson museum?

7 A. That is the only one at
8 corporate. There might be other groups
9 that consider they have a museum. But it
10 might be just a glass case with things in
11 it.

12 Q. Okay. So are you aware of
13 any other subsidiaries of Johnson &
14 Johnson that might have what they
15 consider to be a museum?

16 A. No.

17 Q. Is the museum owned by
18 Johnson & Johnson?

19 A. Yes.

20 Q. Is the museum operated by
21 Johnson & Johnson?

22 A. Yes.

23 Q. You testified earlier that
24 there is a -- there's security at the

1 museum, correct?

2 A. There is security three days
3 a week when we are open for visits.

4 Q. And can you describe for me
5 what you mean by open for visits?

6 A. So the museum is open
7 Mondays, Wednesdays, and Fridays between
8 10:00 a.m. and 5:00 p.m. for employees,
9 contractors who work on the campus,
10 retirees, and their escorted guests to
11 visit.

12 Q. When you say escorted
13 guests, can you explain to me what you
14 mean by escorted guests?

15 A. Sure. Partners they are
16 working with. A lot of employees want to
17 bring their families to visit the museum,
18 so families, spouses, families.

19 Q. And I guess what I'm trying
20 to understand is when you say escorted
21 guest, if I'm a J&J employ -- if I'm a
22 Johnson & Johnson employee and I go to
23 the museum, I can bring my family and I'm
24 considered to be the escort?

1 A. That is correct. They would
2 have to register in advance and sign in
3 like any visitor to our campus. But yes,
4 that is correct.

5 Q. And is -- as it relates
6 specifically to talcum powder products,
7 the current museum that opened May of
8 2016, there are only the two items that
9 we previously discussed that are on
10 display in the museum; is that correct?

11 A. That is correct.

12 Q. Okay. Is the storage area
13 of the museum physically connected to the
14 actual museum itself?

15 A. It is in the same building.
16 But it is card key access, restricted
17 access.

18 Q. And who has access to that
19 storage facility?

20 A. I do. Some facilities folks
21 do, because they need to do cleaning and
22 maintenance, and the general manager of
23 the museum has access.

24 Q. And who's the general

1 manager of the museum?

2 A. Lauren Haber.

3 Q. H-A-B-E-R?

4 A. Yes, that is correct.

5 Q. And do you report to Lauren
6 Haber?

7 A. No, I do not. She manages
8 the space, events and things like that,
9 if people want to register to visit,
10 things like that. But she does not work
11 with the archives.

12 Q. And other than yourself and
13 Lauren, who is it that you said has
14 access to the room?

15 A. There are facilities
16 cleaning staff have access so they can
17 clean. When I say the space, it's
18 through the office space, the restricted
19 access space, so they clean the office
20 space.

21 Q. Facilities people
22 wouldn't -- wouldn't have a need to go
23 into the storage space for any reason
24 that you're aware of, would they?

1 MS. FOURNIER: Objection.

2 THE WITNESS: They

3 shouldn't.

4 BY MR. LAPINSKI:

5 Q. Okay. You said that there
6 is a -- it's a card key access. Is
7 entrance to the storage area tracked?

8 A. I believe if it's card key
9 access, they would have the ability to
10 track it.

11 Q. Okay. And do you know -- do
12 you know by whom that's tracked?

13 A. Security.

14 Q. Are you aware of any
15 unauthorized people entering the storage
16 area during the time that it's been in
17 existence?

18 A. I'm not aware of that.

19 Q. And like the museum, is this
20 current storage -- has this current
21 storage facility been in existence since
22 May of 2016?

23 A. Correct.

24 Q. I think I asked you this

1 earlier. Are there employees who work in
2 the museum?

3 A. Just me and occasionally the
4 general manager. And three days a week
5 there's security at the front desk.

6 Q. And when you're working --
7 working in the museum, what is the role
8 that you're playing inside of the museum
9 while you're working there?

10 A. So my office space is there,
11 and so I do what I generally do over the
12 course of my -- with the course of my
13 workday.

14 Did you want me to go
15 into --

16 Q. Unless you were going to
17 add -- unless you were going to add
18 something else that you do.

19 A. No.

20 Q. Okay. What are -- what are
21 your job responsibilities within the
22 museum?

23 A. So as noted on my CV, I do
24 sort of all of the things there. So I

1 manage and maintain the archives. I
2 research stories from Johnson & Johnson
3 history, so I'd go into the archives to
4 do research for that.

5 I respond to requests. A
6 lot of people have questions about some
7 aspect of the company history. So I
8 would respond to those things. I curate
9 exhibits in our museum.

10 Q. Prior to May of 2016, was
11 there a Johnson & Johnson museum located
12 at a different location?

13 A. It was located at the same
14 location.

15 Q. And like the current museum,
16 was it a museum that was accessible to
17 employees and personnel?

18 A. Only by appointment.

19 Q. And for how long had that
20 museum been in place before the new
21 museum opened in 2016?

22 A. Since the 1960s in that
23 building.

24 Q. And was it in the same

1 location since the 1960s?

2 A. It was.

3 Q. And what is that location?

4 A. That is our power house
5 building. It is a 1907-built building on
6 our campus.

7 MS. FOURNIER: Counsel, when
8 you find a natural breaking point,
9 do you mind? We are at not quite
10 an hour. But I would like to take
11 a break.

12 MR. LAPINSKI: That's fine.
13 We can go off the record.

14 THE VIDEOGRAPHER: The time
15 is 11:42 a.m. We are off the
16 record.

17 (Lunch break.)

18 THE VIDEOGRAPHER: We are
19 back on the record at 12:46 p.m.

20 BY MR. LAPINSKI:

21 Q. Good afternoon,
22 Ms. Gurowitz. Before the break we were
23 talking about physical locations of J&J
24 museums. I believe you testified prior

1 to May of 2016 there was a J&J museum
2 that had been in existence since the
3 1960s; is that correct?

4 A. That is correct.

5 Q. Okay. I'm going to hand you
6 a document that I've marked as Exhibit 6.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-6.)

10 BY MR. LAPINSKI:

11 Q. And this is a document dated
12 March 19, 1982. And it's on Johnson &
13 Johnson letterhead. If you would just
14 take a minute and review that document
15 and then let me know after you've had an
16 opportunity to review it.

17 A. I'm familiar with this
18 document.

19 Q. Okay. Earlier you had
20 testified that you had done a search for
21 documents that may be relevant to your
22 testimony, correct?

23 A. Correct.

24 Q. Is this one of the documents

1 that you found in that search that you
2 considered to be relevant to your
3 testimony?

4 A. Yes.

5 Q. Okay. And if you wouldn't
6 mind, could you please describe for me
7 what this document is?

8 A. This is a document. It's
9 titled "The Kilmer Museum," which was the
10 name of the old Johnson & Johnson museum
11 that had been in this building since the
12 '60s.

13 And it is from L.G. Foster,
14 who at the time was the vice president of
15 public relations at Johnson & Johnson.

16 And the addressees, J.E.
17 Burke was the chairman and CEO of the
18 company. D.R. Clare was the president.

19 And in this memo Mr. Foster
20 states that he and George Frazza who was
21 the head counsel of Johnson --
22 senior-most person at Johnson & Johnson
23 in charge of our law group, decided that
24 when we moved to the new building -- and

1 what they are referencing is Johnson &
2 Johnson's new world headquarters, which
3 was completed and opened in 1982, that
4 the Kilmer Museum, the old museum would
5 be divided into two areas of
6 responsibility and that public relations
7 would assume the responsibility for
8 maintaining the history of the company.

9 Q. So couple questions based
10 upon what you just said.

11 A. Sure.

12 Q. And you can tell that she is
13 a J&J historian, because she does her
14 research or knows.

15 It references the Kilmer
16 Museum.

17 Was the Kilmer Museum -- is
18 it fair to say that the Kilmer Museum is
19 the name of the Johnson & Johnson museum
20 from the 1960s up until the new museum --
21 new museum opened in May of 2016?

22 A. Yes. I did say that the
23 museum had been in that building since
24 the 1960s. It had existed in some form

1 before that in a building that is no
2 longer existing.

3 Q. Okay. So let's -- let's
4 take a step back. From the 1960s until
5 1982, the Kilmer Museum was in the power
6 house building, correct?

7 A. Correct.

8 Q. Now, in 1982, this memo
9 talks about a move to a new building,
10 correct?

11 A. Yes. What they're
12 referencing is the newly constructed
13 Johnson & Johnson world headquarters in
14 New Brunswick.

15 And so what they are talking
16 about was they would take -- they would
17 turn what had been the museum, which had
18 been a collection of showcases with just
19 stuff, items in them, and then products
20 in storage, develop an audio-visual
21 presentation, and then have a very
22 limited number of, as they put it, old
23 product samples in this memo on display
24 in the outer lobby of the tower, which is

1 part of the new world headquarters
2 building.

3 Q. And when was the new world
4 headquarters building completed?

5 A. It opened in 1982.

6 Q. And at the time that the new
7 world headquarters opened, did they have
8 a museum in that building as anticipated
9 by this memo?

10 A. In the new world
11 headquarters building?

12 Q. Yes.

13 A. Not as we consider the
14 museum. What they had was, they
15 referenced the outer lobby by the tower.
16 There was sort of a very shallow showcase
17 there. And inside that showcase was sort
18 of a graphic timeline with very few
19 artifacts in it.

20 Q. Are you aware of whether or
21 not within that showcase there were any
22 samples that are contained on the sample
23 list that we have here?

24 A. I do not know. We don't

1 have information on exactly what was in
2 the showcase.

3 Q. And how long was that
4 showcase in existence?

5 A. It was in existence from
6 sometime circa 1982 to sometime in the
7 1990s or late 1990s, maybe.

8 Q. Do you have any -- do you
9 have any records in your museum files
10 that would lead you to believe that there
11 were sample products -- talcum powder
12 sample products that were put on display
13 in that outer lobby?

14 A. There may have been. It was
15 sort of a historical timeline of the
16 corporation. So it's possible that in
17 that showcase there might have been
18 Johnson's Baby Powder artifact among the
19 other artifacts that was ultimately
20 decommissioned, and a flat screen monitor
21 was put in its place.

22 Q. But you have -- you have no
23 documentation or knowledge that there
24 actually was a Baby Powder product that

1 was in that display?

2 A. I don't. At the time
3 documentation was not kept, so presumably
4 when they took whatever was in there out
5 of it they just would have put it in a
6 box along with all the other boxed up
7 artifacts without documenting what was
8 put and where it was put.

9 Q. Is there a -- are there
10 boxes of artifacts that came from the
11 world headquarter display that we are
12 talking about that were ultimately
13 removed and put somewhere?

14 A. We do not have records of
15 exactly where those products went from
16 the world headquarters display, if they
17 were returned to the collection that was
18 in what was left of the old museum.
19 They -- it would not have been noted.

20 Q. Okay. Going back to the
21 Kilmer Museum, was the Kilmer Museum a
22 public access museum?

23 A. No, it was not.

24 Q. Could you describe for me

1 what the Kilmer Museum was?

2 A. The Kilmer Museum was a
3 collection of artifacts in sort of, you
4 know, wood and glass showcases, sort of
5 very old school. There was no
6 interactivity. They were just sort of in
7 these showcases with no explanation.

8 There was no climate
9 control, so there was no air
10 conditioning. In the summer, it got very
11 hot in there. There was no light
12 control, so if the light was hitting
13 those cases it would fade whatever was in
14 it or, you know, interact with it.

15 Q. In addition to the
16 collection of glass cases that you just
17 referenced, did that museum also have a
18 storage area?

19 A. It did. It had a room with
20 boxes, unlabeled boxes, like, you know,
21 the cardboard banker boxes with the lids,
22 with product artifacts in it.

23 Q. Prior to the 1960s, did J&J
24 have any type of museum?

1 A. From the research I
2 conducted in our archives, the company
3 did. It was the same sort of showcase
4 museum with glass and wood showcases.

5 Q. And do you know where that
6 museum was located?

7 A. It was in a building that no
8 longer exists.

9 Q. And do you know the period
10 of time for which that museum was in
11 existence?

12 A. We have a photograph or two
13 from company newsletters from the 1950s
14 that photographs were taken in that. So
15 certainly it was in existence in the
16 1950s.

17 Q. Okay. And do you have -- do
18 you have any documentation in regard to
19 the samples that are contained on this
20 sample list, that any of those samples
21 were displayed in the Kilmer Museum?

22 A. We don't have documentation.
23 But some -- when we restored the museum,
24 obviously everything had to be taken out

1 of the building so that construction
2 would happen. There were some that were
3 in showcases. They were taken out and
4 packed up along with what was in storage.

5 Q. When you say restored the
6 museum, what are you referring to?

7 A. So the old museum, again I
8 mentioned it's a building that was built
9 in 1907. The museum had been put in
10 there sometime in the early 1960s. And
11 so when the determination was made to
12 restore the museum and make it sort of a
13 modern state-of-the-art museum as we
14 understand museums to be, everything was
15 removed to offsite storage so that the
16 building could be restored, and then the
17 current museum constructed, and along
18 with the proper climate-controlled
19 archival storage inside it.

20 Q. So when -- when you are
21 talking about restoring the museum, are
22 you referring to building the new museum
23 on the main campus?

24 A. Well, so the new museum is

1 in that same building. We restored the
2 1907 building and then created a modern
3 state-of-the-art, interactive,
4 climate-controlled museum with
5 climate-controlled archival storage in
6 the back.

7 Q. So your reference to the
8 restoration of the museum is, after the
9 restoration was complete, you opened the
10 current museum in May 2016, correct?

11 A. Correct, in that same
12 building.

13 Q. Okay. So you were a J&J
14 employee employed as a historian at the
15 time that the old museum samples were
16 boxed up and moved to an offsite
17 facility, correct?

18 A. Correct. And if you
19 remember before, we talked about hiring a
20 team of professional archivists who
21 catalogued the collection for the first
22 time. They are the ones who boxed it up.
23 We moved it to offsite storage during
24 construction. And then once the archives

1 in the building was completed, we moved
2 it back into its new climate-controlled
3 archival storage.

4 Q. Now, do you know whether the
5 archivists at the time that they were
6 boxing up the various samples were
7 recording where those samples had been
8 taken from?

9 A. They were not, because it
10 was not relevant moving forward. So
11 there were some samples that were in a
12 showcase that, again, there was no air
13 conditioning in there. No light control.
14 And others were stored in boxes in a
15 room.

16 So but it wasn't relevant to
17 moving forward. I mean, they all got new
18 catalogue numbers so we could find them
19 in the new storage. But it wasn't
20 relevant to note for the museum purposes
21 where we had -- where they had taken them
22 out of, whether it was from one of those
23 old showcase cabinets or a box.

24 Q. Was there any policy that

1 was in place when these -- when samples
2 were being boxed by the archivists,
3 whether they were supposed to document
4 anything beyond a product number for the
5 particular product?

6 A. Well, they documented what
7 was written on the label, which is also
8 reflected on this sheet. So they
9 documented that. Occasionally they might
10 document condition, is it in good
11 condition? Is the artifact in such
12 fragile condition that you need to get it
13 restored right away? That kind of a
14 thing.

15 Q. Was there a policy in place
16 that they were to document whether or not
17 there was damage -- strike that.

18 Was there a policy in place
19 where they would document recognizable
20 damage to packaging?

21 A. Yes. They generally would
22 document recognizable damage to
23 packaging.

24 Q. And was that documentation

1 provided to you as the historian for the
2 museum?

3 A. Yes.

4 Q. And do you maintain that
5 documentation now?

6 A. I do.

7 Q. Is that on the cloud system
8 that you had previously mentioned?

9 A. Some of it is. If there
10 were significant damage to an artifact,
11 it was listed. But they would provide me
12 a list. Most of those, the things with
13 significant damage, were things that were
14 in paper or cardboard packaging. So it
15 really didn't apply to the powder
16 artifacts, because they were either in
17 tins or plastic.

18 Q. Ms. Gurowitz, going back to
19 your search for documents when you found
20 Exhibit 6, which was the 1982 memo, what
21 were you using as a basis in order to
22 determine whether or not a document was
23 relevant?

24 A. Whether either it related to

1 Johnson's Baby Powder samples, for
2 example, but mostly related to the museum
3 collection, because I was trying to piece
4 together chain of custody for the samples
5 labeled marketing that were sent to
6 offsite storage in this 1982 time frame.

7 I had mentioned before that
8 they sent the products back to the
9 relevant operating company, and then the
10 consumer company put those in offsite
11 storage. So I was trying to piece
12 together chain of custody.

13 Q. Okay. Are you -- and going
14 back to the documentation that we
15 discussed that the archivists would
16 document if they saw damage to a
17 particular product while they were
18 packing it up at the old Kilmer Museum,
19 are you aware of any documentation of
20 talc samples that were damaged in any
21 way?

22 A. There was one plastic
23 container, I remember it was damaged. So
24 if there's a -- plastic gets very brittle

1 with age sometimes. So there was one
2 that -- an older plastic container that
3 the top was off, and so that would have
4 been noted. And I think that actually
5 was -- I think that was one of the
6 samples that went to the lab. So it was
7 noted.

8 Q. Okay.

9 A. And it was just that the
10 plastic had broken over time.

11 Q. If the top is removed from
12 one of the plastic talc bottles, are you
13 able to put that top back on and secure
14 that top again?

15 A. It depends on the condition
16 of the bottle and the age of the bottle.
17 The older plastic bottles get very
18 brittle. So the act of removal could
19 just cause the plastic to fracture into
20 little pieces. So it would depend.

21 Q. Other than the one bottle
22 you're referring to, you're not aware of
23 any other bottles that were listed as
24 damaged when they were packed and stored

1 from the Kilmer house?

2 A. Not off the top of my head.
3 There were some where there were cracks
4 in the caps, I remember, when we were
5 packing them up. But there was one where
6 the top had completely come off.

7 Q. And to the extent that there
8 were cracks within the cap, would that
9 have been documented as well?

10 A. By the archivists or?

11 Q. Well, you had said that it
12 was the archivists who were documenting
13 it. If -- would it have the been
14 documented by the archivists? That would
15 be my first question.

16 A. They were documenting
17 significant damage, so it may have. But
18 they were looking at thousands of
19 artifacts beyond just powder artifacts.

20 Q. Right.

21 A. So it's -- so I would have
22 to check and see. It's possible that
23 they were documenting significant damage
24 like, you know, half of this package has

1 come apart from the other half or
2 something like that, versus there's a
3 crack in a cap.

4 Q. Now, would they document --
5 was anyone else documenting any type of
6 damage?

7 A. When I worked with the legal
8 folks to pack up the samples from the
9 corporate archives to go to the lab, I
10 believe we noticed -- we documented if
11 things were significantly damaged.

12 Q. And that was you that was
13 documenting it, or someone from the legal
14 team that was documenting it?

15 A. It was both of us in tandem.

16 Q. Okay. And is that -- is
17 that documentation something that you
18 maintain now as the historian?

19 A. I believe it was in -- it
20 might be -- I would have to look.

21 It's -- it might be on the transfer
22 sheets or the materials that went with
23 the objects to the lab.

24 Q. Okay. I'm going to give you

1 another exhibit.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-7.)

5 BY MR. LAPINSKI:

6 Q. We'll mark this as
7 Exhibit 7. This is a little bit
8 difficult to read. This is how it was
9 produced to us.

10 This is a March 9, 1951,
11 draft memo on Johnson & Johnson
12 letterhead.

13 If you would take a minute
14 to review that and just let me know after
15 you've had an opportunity to review it.

16 A. Sure.

17 I have reviewed it.

18 Q. Okay. Before we -- I ask
19 you questions about this document, going
20 back to the talcum powder bottle that we
21 discussed where the top was off.

22 Do you recall what the
23 sample number was of that particular
24 bottle?

1 A. I don't offhand. But it was
2 one that had a very square profile. So
3 it would not have been a super recent
4 one.

5 It would have been --
6 anytime between 1963 and the late 1980s.

7 Q. And are you aware of whether
8 there was any powder inside of the
9 container?

10 A. There was, which is why we
11 were concerned to store it upright,
12 because if it tipped over it would spill.
13 I believe it was put in a bag so that --
14 and baggy so it wouldn't -- in case it
15 did get jostled the contents wouldn't
16 come out.

17 Q. And that was put in a bag at
18 the time that you prepared it for
19 shipment to the lab?

20 A. We did -- I believe -- we
21 did something to it so that it would --
22 that the top was secure in case it got
23 jostled because we realized that the top
24 was open.

1 Q. Okay. And just so that I
2 can confirm on my end, the timing that we
3 are talking about with that particular
4 sample deals with you preparing the
5 samples to go to the lab as compared to
6 that sample being taken from the old
7 museum and put in storage until the new
8 museum was complete, correct?

9 A. That's correct. Although it
10 had been stored upright for obvious
11 reasons so that it didn't spill.

12 Q. Okay. Going back to the
13 document that I handed you, which is
14 Exhibit 7. Have you seen that document
15 before?

16 A. It's -- it's hard -- from
17 the copy, it's hard to tell. I may have.
18 But I couldn't say for sure.

19 Q. Is this one of the documents
20 that you found when you were doing a
21 document search in preparation for today?

22 A. I honestly don't remember.

23 Q. This document was produced
24 to us, and I understand that it's a draft

1 document. But I have a couple questions
2 about some information that's in here.

3 And again, this is a
4 March 1951 document. And if you look on
5 the first line, it says, "Henceforth the
6 law department museum will be located on
7 the ground floor directly beneath the law
8 department."

9 My question is, are you
10 familiar with the law department museum?

11 A. The law department museum, I
12 think what they are referring to here is
13 that collection that's later referred to
14 as the Kilmer Museum. And the law
15 department kept it because they wanted to
16 keep a trademark history so they can tell
17 when labeling or package shape changed.

18 Q. And are you aware of whether
19 or not there were any talcum powder
20 products that were part of the law
21 department museum?

22 A. I don't have any
23 documentation that says they definitely
24 would -- were, but I think it's safe for

1 us to assume that the collection that was
2 in the old Johnson & Johnson Kilmer
3 Museum was what they're more or less
4 referring to here.

5 Q. Okay. Now, the Kilmer
6 Museum, starting in the 1960s and this
7 memo being from 1951, there's a nine-year
8 period of time between that where there
9 may have been products that came and
10 went, were discarded, et cetera?

11 A. It's possible.

12 Q. And there's no documentation
13 to confirm that products that were law
14 department museum actually did make their
15 way into the Kilmer Museum, correct?

16 A. We do not have that
17 documentation.

18 Q. Now, if you go to the second
19 paragraph. The second sentence in the
20 second paragraph says, "It has not always
21 been the practice to forward samples of
22 each of our products to the museum, and
23 unfortunately some appear to be missing."

24 Is there now a policy in

1 place for samples of Johnson & Johnson
2 products to be forwarded to the museum?

3 A. There is not.

4 Q. Do you know of any period of
5 time that there was actually a written
6 policy put in place where product samples
7 would be forwarded to the museum?

8 A. Yes, I do.

9 Q. Okay. When -- when was that
10 policy first put in place?

11 A. As best as we can -- as best
12 as can be pieced together from the
13 documentation we do have, sometime from
14 the 1950s through the 1970s. That was
15 discontinued when it was decided to
16 disband the museum as per the 1982 memo.

17 Q. And what specifically was
18 that policy?

19 A. As best as I was able to
20 piece together from the existing records,
21 it was a policy that when the packaging
22 or labeling of something changed, they
23 were to send a sample to the museum.
24 Again, the law department was keeping

1 this as a trademark history so if they
2 needed to look back on all of the
3 historical iterations of a trademark,
4 they would be able to do that.

5 Q. Other than with the change
6 of packaging, were there any other
7 requirements or policies that samples be
8 sent to the museum?

9 A. I'm sorry. I'm not sure I
10 understand the question.

11 Q. I believe what you just
12 testified was that the policy that was in
13 place from the 1950s to the 1970s was
14 that product samples would be sent to the
15 museum when there was some type of a
16 label change, correct?

17 A. Yes.

18 Q. Other than the requirement
19 that samples be sent to the museum upon a
20 label change, were there any other
21 requirements for samples to be forwarded
22 to the museum?

23 A. If the packaging changed in
24 some -- in some way. If they changed the

1 shape of the packaging or they decided on
2 a new size or a new style, then that
3 would have met those requirements.

4 Q. And those samples that were
5 sent to the museum, is it your
6 understanding that to the extent any such
7 samples were sent to the museum, they are
8 now part of the sample list that we're
9 discussing here today?

10 A. I was able to trace some and
11 to determine that yes, you can make
12 correlation with some of them. That is
13 on the list that is labeled as marketing,
14 that department name list, the things
15 that were sent to offsite storage in
16 1982.

17 Q. So pursuant to the policy
18 that we were just discussing, any
19 products that were produced to the museum
20 pursuant to that policy were ultimately
21 sent to offsite storage and are contained
22 in the offsite storage list that we have
23 here?

24 A. Yes. They would have -- so

1 the collection was culled, as we know
2 from that memo. Things were sent back to
3 the operating companies. The operating
4 company then sent that to offsite
5 storage. A much smaller part of that
6 collection was kept in the corporate
7 museum, and those are reflected in the
8 museum -- the part -- the section with
9 the museum number that were catalogued by
10 the archivists.

11 That being said, obviously
12 there are samples and artifacts that
13 predate this 1950s policy. We have no
14 idea how they got into the collection.
15 There is no documentation about that.

16 Q. Okay. In your answer you
17 had referenced a memo, and you said
18 pursuant to the memo samples were sent
19 back to the operating companies.

20 Did I hear you correctly?

21 A. Yeah. So there's this memo
22 from March 19th, 1982. And then there
23 were the transfer sheets from 1982.

24 Q. Okay. So that's what I'm --

1 I wanted to be able to clarify. When you
2 referred to the memo, you were referring
3 to the 1982 memo which is Exhibit 6 that
4 discusses, for lack of a better term, the
5 breakdown of the museum, correct?

6 A. Correct.

7 Q. Okay. So samples that had
8 been collected and maintained from the
9 1950s to the 1970s pursuant to the policy
10 were stored at the museum, correct?

11 A. At one time, yes.

12 Q. And then in and around 1982,
13 the samples that were at the museum were
14 sent back to the various operating
15 companies from which they had been
16 produced, correct?

17 A. Many of them were, yes. A
18 smaller amount was kept in the corporate
19 collection.

20 Q. Okay. So using the sample
21 list, the documents that are listed on
22 the offsite storage list will also
23 include some samples that had been
24 maintained at the museum for years prior

1 to 1982?

2 A. That's correct.

3 Q. For the -- strike that.

4 Other than the law
5 department museum that is referenced in
6 the 1951 draft memo, the Kilmer Museum
7 that we've spoken about. And the latest
8 Johnson & Johnson museum that you oversee
9 have there been any other Johnson &
10 Johnson museums?

11 A. There have been things that
12 were referred to as museum. But they may
13 not be a museum in the way that we
14 understand it.

15 There is a Shower to Shower
16 sample that says, "Property of the PPC
17 Museum," Personal Products Company. It
18 was an operating unit that no longer
19 exists at one time that marketed Shower
20 to Shower.

21 I don't have -- it's in a
22 building that's no longer there. There's
23 nobody left who would remember that.

24 And so we don't know what

1 they mean by museum. Probably it was not
2 a museum the way we understand -- the way
3 we understand a museum to be. It likely
4 was probably a showcase somewhere.

5 And also the -- four
6 samples, the samples that were sent from
7 the UK, they were referenced as having
8 been on a museum on site. But the person
9 who made that reference said that the
10 museum was actually a glass case with
11 stuff in it.

12 Q. Okay. To your knowledge,
13 there -- other than the three museums
14 that we talked about from a Johnson &
15 Johnson perspective, there were no other
16 official museums?

17 A. To my knowledge, that's
18 correct.

19 Q. In your current role
20 overseeing the museum, is there a written
21 policy in place for the procurement of
22 product samples for the museum?

23 A. There is not.

24 Q. And has there ever been any

1 type of written policy in regard to the
2 procurement of product samples for the
3 museum?

4 A. There is this 1951 policy
5 that's Exhibit 7 that said that samples
6 should be sent. And again, when they had
7 a change in trademark somehow, they would
8 send a sample.

9 Q. And other than this draft
10 document, are you aware of any other
11 written documentation that would outline
12 those policies and procedures?

13 A. Are you referring to --
14 you're referring to the old policy?

15 Q. Well, the 1951 policy is
16 just a draft memo. And I'm just asking
17 whether or not there were any type of
18 actual written policies that were
19 incorporated that you're aware of.

20 A. I think there was something
21 else that was provided as part of me
22 looking through the records and finding
23 it. But other than that specific policy
24 that's encompassed by those documents,

1 I'm not aware of other specific policies.

2 Q. And are they documents that
3 you reviewed in preparation for today's
4 deposition?

5 A. Yes.

6 Q. And do you -- can you
7 describe for me what those documents were
8 as far as the date of those documents,
9 and any other information you may have in
10 regard to those documents?

11 A. I think -- I think one of
12 them was undated. So I don't know when
13 the date was. Although it looks like it
14 was typewritten, so we can infer that
15 they used a typewriter that it's
16 certainly not recent.

17 It did say something about
18 when there was a change to the labeling
19 or packaging, send a sample to the
20 Johnson & Johnson museum.

21 And they were referenced by,
22 you know, merchandising notices that said
23 you are supposed to list which
24 merchandising notice this would be. So

1 in other words, if they made the type
2 bigger, they would -- might be -- they
3 might -- they would list that and say
4 this is the packaging change that
5 happened as a result of -- we made the
6 logo bigger, or something like that.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-8.)

10 BY MR. LAPINSKI:

11 Q. I'm going to mark this as
12 Exhibit 8. I'm going to hand that to
13 you, and I'll ask you to take a look at
14 that and describe it.

15 MS. FOURNIER: She is so
16 good at describing.

17 THE WITNESS: Yes, that is
18 the document.

19 BY MR. LAPINSKI:

20 Q. All right. Before we
21 start -- before we start talking about
22 this document that I've marked as
23 Exhibit 8, the documents that, similar to
24 Exhibit 8 that you had looked at when --

1 let me take a step back.

2 Did you bring any documents
3 with you here today other than the
4 document that we previously marked as
5 Exhibit 5, which was the e-mail with the
6 various peoples names?

7 A. No, I did not.

8 Q. Okay. Other than the
9 document that you have in front of you
10 now which has been marked as Exhibit 8,
11 approximately how many other documents
12 were there that you reviewed and relied
13 upon in order to refresh your
14 recollection in preparation for today?

15 MS. FOURNIER: Objection to
16 form.

17 THE WITNESS: I think other
18 than what's in front of me --
19 front of us, that's it. That's
20 what I reviewed.

21 BY MR. LAPINSKI:

22 Q. If we can go back to
23 Exhibit 8. And you had started to
24 describe the document in great detail

1 before I had it in front of me. So I'm
2 going to ask you to kind of go through
3 this again.

4 Is it your understanding
5 that Exhibit 8 is the written policy that
6 you had been referring to about the
7 provision of product samples to the
8 museum?

9 A. It appears to be that, yes.

10 Q. And it's your understanding
11 that this policy was in place from
12 approximately the 1950s to the 1970s?

13 A. Well this references a date
14 in 1979 and '82. So it certainly was in
15 place -- certainly some iterations of
16 this policy were in place over that time.

17 Q. Okay. And then it's your
18 understanding that after 1982, that was
19 no longer a policy?

20 A. Correct.

21 (Document marked for
22 identification as Exhibit
23 Gurowitz-9.)

24 BY MR. LAPINSKI:

1 Q. I'm going to hand you a
2 document that's going to be marked as
3 Exhibit 9. I'll ask you to just take a
4 minute and take a look at that. Just let
5 me know when you're done reviewing and
6 ready to answer questions on that.

7 A. I'm done reviewing.

8 Q. Okay. Have you seen this
9 document before?

10 A. I don't believe I have, no.

11 Q. Okay. This is a document
12 that was produced, and it's a handwritten
13 document with some notes on it.

14 First of all, do you know
15 who Marilyn Rondelli is?

16 A. No, I do not.

17 Q. There is -- the next line
18 says, "Baby products, test materials
19 sent." And I believe that's 1/1983.

20 Do you have any idea what
21 that would be a reference to?

22 A. I do not.

23 Q. Do you know whether in and
24 around the January 1983 time frame,

1 talcum powder products would be included
2 in baby products?

3 A. I don't have any information
4 they would or not. So I'm unable to
5 determine that.

6 Q. If you go to the second
7 line, it refers to ortho products. Do
8 you know who Harry Grigg is?

9 A. I do not.

10 Q. On the third line it refers
11 to McNeil Consumers. Do you know who
12 Jack McCann is?

13 A. No, I do not.

14 Q. Next line that refers to
15 McNeil Pharmaceutical. Do you know who
16 Ron Dahlen is?

17 A. I do not.

18 Q. And then the last line it
19 refers to personal -- well, there's no
20 name there with Personal Products.

21 Do you know whether or not
22 Baby Powder products would have been
23 considered a group of personal care
24 products or Personal Products in 1983?

1 A. Personal Products was the
2 name of an operating unit. So they would
3 not have marketed baby products from that
4 operating unit.

5 Q. Do you currently have a
6 written policy in place for the
7 maintenance of historical samples at the
8 J&J museum?

9 A. When you say historical
10 samples, are you referring to them in the
11 sense of the 1951 memo where they said
12 send samples, or are you referring to the
13 collection that's part of the corporate
14 archives in the museum?

15 Q. I'm referring to the
16 collection that's part of the corporate
17 archives now.

18 So we previously -- we've
19 previously discussed that there are
20 samples of all sorts of products that are
21 on display in the current museum, and
22 then there are also samples of all sorts
23 of products that are currently maintained
24 in archives, correct?

1 A. Correct.

2 Q. Okay. And my question is
3 whether or not there is a written policy
4 in regard to the maintenance of those
5 archive samples.

6 A. I would have to look back
7 and see if the policy is written. But
8 the policy as it is followed would be the
9 policy of any archives, that they must be
10 maintained in a climate and
11 light-controlled storage area in
12 acid-free storage.

13 Q. And if the policy was a
14 written policy, where would that written
15 policy be maintained?

16 A. I would have an electronic
17 copy of that.

18 Q. Do you know when that policy
19 would have gone into effect?

20 A. It would have been created
21 by the archivists who professionally
22 catalogued the collection. So sometime
23 in the 2014, 2015 time frame.

24 Q. And prior to that 2014 or

1 2015 time frame, are you aware of any
2 type of written policy that was in place
3 in regard to the storage of samples?

4 A. No, I'm not. There was no
5 policy as far as I'm aware of.

6 Q. Prior to 2014, one of your
7 responsibilities as the historian was to
8 be able to maintain samples, correct?

9 A. When you're referring -- you
10 mean -- I just want to ensure that I
11 understand the question correctly. Do
12 you mean the artifacts in the museum
13 building in the corporate archives
14 collection?

15 Q. Correct, yes. So -- and let
16 me -- let me rephrase the question so
17 that I actually understand along with
18 you.

19 Prior to -- prior to the
20 archivist policy that was put in place in
21 and around 2014, you were responsible for
22 the care and maintenance of product
23 samples that were at the museum, correct?

24 A. Correct, to the best of my

1 ability, under the conditions they were
2 in before the museum restoration project.

3 As I mentioned, they were
4 not stored in a climate-controlled area.
5 I was not -- there was nothing to be done
6 to influence that. So I maintained them
7 as best I could under those conditions.

8 Q. Okay. Was there -- is there
9 currently a policy in place regarding the
10 intake of samples into the museum?

11 A. Yes. We have an
12 accessioning policy.

13 Q. And is that a written
14 policy?

15 A. It's -- I believe I may have
16 a draft of it. But it's -- right now it
17 may be largely unwritten.

18 Q. Okay. When you're in a
19 situation where the only employee that's
20 there, it's not necessarily necessary to
21 have the written policies since you are
22 the only one that's enforcing it?

23 A. That's true. And -- you
24 know, so it probably exists in a draft

1 form. It may not exist in a final form
2 right now. But...

3 Q. So what is that -- what is
4 that policy?

5 A. So the policy is that the
6 artifact have to be relevant to major
7 stories in Johnson & Johnson history.
8 They have to be in good to excellent
9 condition.

10 They -- so in other words,
11 if something were in very bad shape,
12 rusty, dirty, falling apart, it would not
13 meet the accessioning criteria. If it
14 was an artifact that was a product from
15 another company, that wouldn't meet the
16 accessioning criteria. If it were -- if
17 it were something that -- so if it was,
18 you know, something that did not help us
19 illustrate a major story about Johnson &
20 Johnson history, it also might not meet
21 the accessioning criteria.

22 Q. And about how long ago did
23 you start to implement that particular
24 policy?

1 A. With the restoration and
2 opening of the new museum.

3 Q. Okay. Prior to -- prior to
4 the opening of the museum, was there any
5 policy that you had in place as far as
6 the intake of samples?

7 A. Just that -- basically that
8 possibly informally. But as I mentioned
9 before we get a lot of donations.

10 Sometimes I would come back
11 from lunch to find an anonymous donation
12 on my desk. No note, no identifying
13 information. I would ask people, "Did
14 you see who dropped this off?" They
15 hadn't. So things would show up on my
16 doorstep as it were.

17 Q. Now, as it relates to talc
18 samples, there's only one instance that
19 you're aware of where that happened with
20 talc samples, correct?

21 A. Correct. Most of them were
22 other products.

23 Q. Okay. Is there any type of
24 policy in place for the current museum as

1 far as the removal of samples from the
2 museum?

3 A. Yeah. Something could be
4 deaccessioned if its condition was so
5 deteriorated that it posed a danger to
6 the artifacts stored around it.

7 For example, if it was a
8 product that was liquid in it and that
9 was leaking or something like that, or if
10 it was in such bad condition that we
11 could never exhibit it and it wasn't the
12 only one of its kind, so those would be
13 examples of why something might be
14 deaccessioned. Or if it had completely
15 no relation to Johnson & Johnson or its
16 history. Those could be reasons why
17 something would be deaccessioned.

18 Q. Now, would that apply to
19 both items that are on display as well as
20 items that are maintained in storage?

21 A. It would be, although, you
22 know, we try to ensure all of the items
23 that are on display are in -- the ones
24 that are in better condition.

1 Q. How about -- well --

2 A. With some exceptions
3 obviously.

4 Q. In a -- in a situation that
5 you just described, if there was a
6 product that was in such a condition that
7 you were going to remove it, what would
8 you do with that product?

9 A. It depends on what it --
10 what it was. We would dispose of it. We
11 would work with our facilities folks to
12 dispose of it in the best -- whatever
13 manner they advised.

14 Q. So it would be disposed of,
15 but it would be disposed of in a way
16 that, for example, environmentally may
17 have been the environmentally appropriate
18 way to dispose of it?

19 A. Correct.

20 Q. How about removal of samples
21 from the museum not for purposes of
22 disposal, but because someone wants to
23 take something out of the museum? Is
24 there a policy in place for that?

1 MS. FOURNIER: Objection.
2 Outside the scope. You can go
3 ahead and answer.

4 THE WITNESS: Okay. We
5 don't allow people to borrow
6 things from the museum or
7 archives. It's not a lending
8 library.

9 Occasionally we might get a
10 request from another museum who
11 asks for a loan for something to
12 go on exhibit.

13 The protocol among museums
14 is they fill out paperwork that
15 details the climate and humidity
16 control they have, how they're
17 going to safely transport it and
18 exhibit it and things like that.
19 And you can either agree to the
20 loan or not agree to the loan.

21 BY MR. LAPINSKI:

22 Q. Are you aware of any
23 situations since you've been in your
24 position at Johnson & Johnson where

1 you've loaned a talc sample to another
2 museum?

3 A. No.

4 Q. Are you aware of any time
5 during your tenure at Johnson & Johnson
6 that you have loaned any sample that's on
7 these lists to anyone other than a
8 museum?

9 A. I am not aware. But I did
10 not have charge of the archives until
11 2006. So I -- there is no information
12 about what was done before then.

13 Q. Okay. If there -- similar
14 to what you talked about with the museum
15 protocol, was there a policy in place
16 when you started in 2006 that if a sample
17 were to be removed from the museum, the
18 removal of that sample would be
19 documented?

20 A. I would have documented it.
21 When I started in 2006, nobody --
22 nobody -- before that, nobody really had
23 charge of the archives. They were in the
24 museum building, and lots of people had

1 access to that building. The corporate
2 art, like the stuff that people, when
3 they moved into the office, they wanted
4 artwork to hang on their walls, was
5 stored in the back of the building. So
6 there were people in and out of the
7 building looking at corporate art.

8 The room that the
9 archives -- the artifacts were stored in
10 was not locked. Anyone could go in and
11 out of there. I put a lock on the door.
12 So before that it was open to whoever
13 accessed the building. So -- and we had
14 -- there was no way of knowing if, you
15 know, who came in and out of that room.

16 Q. And are you aware at any
17 time of anyone accessing the storage in
18 the archives at any time prior to you
19 putting a lock on the door?

20 A. Well, people would have gone
21 in. Certainly the corporate librarian
22 would have gone in. She had charge of
23 that before I did. So -- and there might
24 have been -- I don't remember, I'm sorry,

1 when she retired. But there might have
2 been an interim time where sort of nobody
3 really had really charge of that.

4 So it's possible that people
5 did go in and out.

6 There are things I remember
7 looking at when I was first hired as a
8 research assistant that were not part of
9 the archives when I took over charge of
10 it.

11 So clearly -- they were
12 paper documents. So clearly, you know,
13 some things had been removed.

14 Q. So you said when you were an
15 intern -- when you were an intern, you
16 recall looking at things that were
17 maintained in the archives that were no
18 longer there when you started --

19 A. So, yeah, when I was first
20 hired as a research assistant. And let
21 me preface, they were paper artifacts.
22 They weren't related to talc. They were
23 letters from U.S. presidents. And so
24 when I got the management of the archives

1 they were no longer in the paper
2 archives. That's what I was referring
3 to.

4 Q. Okay. Understood. Do you
5 have any knowledge of any talc-related
6 archives being removed from storage prior
7 to you putting a lock on the door?

8 A. I do not know of that.

9 Q. Okay. Do you have any
10 knowledge of anyone accessing any of the
11 talc samples prior to 2006 before you put
12 the lock on the door?

13 A. I do not have knowledge of
14 that.

15 Q. Since 2006 when you assumed
16 responsibility, are you aware of any talc
17 samples being removed from the archives?

18 A. I am not aware of that.

19 Q. Are you aware of any talc
20 samples having been destroyed that had
21 previously been maintained in the
22 archives?

23 A. I'm not aware of that.

24 Q. Since 2006, are you aware of

1 any talc samples being temporarily
2 removed from the archives for purposes of
3 testing?

4 A. I'm not aware of that.

5 Q. To the extent that any
6 archive had been removed for such a
7 purpose, is that something that you would
8 have documented?

9 A. If -- if I knew about it,
10 yes. I mean, I had a key and obviously
11 our facilities people had a key to the
12 door. But, I mean, these are historic
13 artifacts. So, you know, so there was
14 very little interest in them.

15 MR. LAPINSKI: Let's go off
16 the record. Let's take a
17 five-minute break.

18 THE VIDEOGRAPHER: The time
19 is 1:35 p.m. We are off the
20 record.

21 (Short break.)

22 THE VIDEOGRAPHER: We are
23 back on the record at 1:54 p.m.

24 BY MR. LAPINSKI:

1 Q. Ms. Gurowitz, we've talked
2 previously about the -- briefly about the
3 four samples that were sent from the
4 United Kingdom by Dr. Hopkins correct?

5 A. Yes.

6 Q. And we also talked about
7 certain samples that are on our list that
8 were provided to Johnson & Johnson by
9 Bill Ashton's daughter at some point in
10 time, correct?

11 A. That's correct.

12 Q. And we also talked about the
13 item New Museum 3, which was an item that
14 was left at the security area at the
15 museum and you don't know where that came
16 from, correct?

17 A. Yes, correct.

18 Q. Other than those three --
19 those three examples there, are you aware
20 of -- strike that.

21 Other than those three
22 examples there, is it fair to say that
23 the other samples have been in the
24 control of Johnson & Johnson since the

1 time they were manufactured?

2 MS. FOURNIER: Objection.

3 THE WITNESS: We cannot say
4 that. While I was able to piece
5 together pieces of their history
6 and continuity and where they've
7 been, there's not enough
8 information to place -- to create
9 an entire chain of custody.

10 The only thing that I was
11 able to create or to research or
12 really more or less complete chain
13 of custody for were the PTI
14 samples, because there was good
15 information.

16 For the others, we just do
17 not know how they got into the
18 collection originally for many of
19 them.

20 There are, as I mentioned
21 before, many samples that are
22 older than those marketing
23 notices, that said, "Hey, if you
24 change your packaging, send us a

1 sample." We don't know how those
2 got into the collection. So --
3 and as well as, you know, other
4 ones that you cannot piece
5 together a complete chain of
6 custody. You can piece together
7 pieces of chains of custody, but
8 not a complete chain of custody.

9 BY MR. LAPINSKI:

10 Q. And other than the three
11 examples that we spoke about, when you
12 did your research, you didn't come across
13 any information to show that the
14 remaining samples were not in J&J's
15 control at any time since the time of
16 manufacture, correct?

17 MS. FOURNIER: Objection.

18 THE WITNESS: There is no
19 information. So I don't have any
20 data or information to base that
21 on. I cannot come to a conclusion
22 about it.

23 BY MR. LAPINSKI:

24 Q. Okay. Going back to the

1 policy we had talked about that was in
2 place from the '50s up until the early
3 1980s about the provision of samples to
4 the museum.

5 Was there a policy in place
6 as to how those samples were supposed to
7 be provided to the museum?

8 A. I haven't seen anything
9 other than those documents. So they were
10 interested in the packaging, how the
11 packaging had changed and the labeling.

12 So I haven't seen any
13 information about how they were provided,
14 whether they had to be full, whether they
15 could be empty. Certainly the packages
16 weren't sealed. Safety seals are a very
17 modern phenomena that happened after the
18 1980s. So historically, you know,
19 products were not sealed.

20 So they could have been
21 provided a variety of ways. It just said
22 whenever you change the label or the
23 packaging, provide a sample.

24 (Document marked for

1 identification as Exhibit

2 Gurowitz-10.)

3 BY MR. LAPINSKI:

4 Q. I'm going to hand to you a
5 document that we are marking as
6 Exhibit 10. And if you could review that
7 document and let me know when you've had
8 an opportunity to review it.

9 A. Yes, I've reviewed it.

10 Q. And have you seen this
11 document before?

12 A. Yes, I have.

13 Q. And what is your
14 understanding of what this document is?

15 A. These are the chain of
16 custody sheets that were filled out when
17 the product artifact or samples, as we
18 call them, were transferred from the J&J
19 museum to the legal folks for
20 transportation to the lab.

21 Q. And on the first page of the
22 document, and actually running throughout
23 the entire document, there's a section
24 that is labeled release by. And there

1 are initials there. Are they your
2 initials?

3 A. They are.

4 Q. Okay. So this chain of
5 custody you released on February 22nd,
6 2018. You released custody of all of the
7 museum samples to a representative of
8 DBR, correct?

9 A. All the museum samples
10 listed in this document, yes.

11 Q. Okay. And going back to
12 testimony that you provided earlier,
13 could you just run through the process
14 that you went through in preparing these
15 samples for shipping?

16 A. So I pulled them from the
17 storage boxes they were in in the
18 corporate archives.

19 As I mentioned before, I
20 wear gloves when I handle artifacts so as
21 not to potentially damage the artifact
22 from, you know, oils on your skin and
23 things like that.

24 So they were taken out of

1 those boxes and they were -- you know,
2 sometimes they were -- I don't remember
3 whether we un- -- some of them had
4 acid-free tissue paper around them. I
5 don't remember whether we unwrapped some
6 of them. Some of them may have,
7 depending on there fragility, been
8 transported with that in place, some not.

9 And then they were then
10 placed in the boxes that were going to be
11 used to transport them to the lab, and
12 then these sheets were filled out.

13 Q. Okay. And when they were
14 placed into the boxes, after you placed
15 them into the boxes, did you seal those
16 boxes?

17 A. The top was put on. I don't
18 know if it was -- I don't remember
19 whether it was sealed with tape or
20 anything like that. They were, you know,
21 like bankers boxes kind of things.

22 Q. And if you would turn to --
23 if you look in the lower right-hand
24 corner, there are Bates numbers on there.

1 All the way -- yes.

2 A. Is this what you're --

3 Q. Yes. If you would turn to
4 the page that ends in 628.

5 And the second entry on that
6 page is for Package Number 2014.001.2455.

7 Do you see that?

8 A. I do.

9 Q. And there's a notation on
10 there in parentheses "Top off."

11 A. I see that.

12 Q. Is that referring to the
13 particular museum sample that you
14 testified to earlier that was produced
15 with the top off?

16 A. I believe that would, yes.

17 Q. And are you aware of any
18 other samples that were produced from the
19 museum that had the top removed at the
20 time it was produced?

21 A. At the time it was produced,
22 no. That's one that came to mind,
23 because at some point in the artifact's
24 history, the top, the plastic top had

1 broken completely off.

2 Q. Is it fair to say if there
3 were other samples that you had taken
4 from the museum in order to produce that
5 were missing the top, you would have
6 documented it for those samples as well?

7 A. If the top was completely
8 off at the time of transfer, yes. It
9 would have -- I'm sure it would have been
10 documented.

11 Q. That was Exhibit 10 that I
12 gave you, right? That's what I marked it
13 as?

14 A. Mm-hmm, yes.

15 (Document marked for
16 identification as Exhibit
17 Gurowitz-11.)

18 BY MR. LAPINSKI:

19 Q. I'm going to hand you a
20 document that we're marking as
21 Exhibit 11. Take a moment to look at
22 that and let me know when you've had an
23 opportunity to review it.

24 A. Okay. Okay.

1 Q. Okay. Have you seen this
2 document before?

3 A. I don't believe I have.

4 Q. Okay. This is a -- this is
5 a chain of custody document. The first
6 Bates number on it is JNJ TALC000536610.

7 Ms. Gurowitz, what's your
8 understanding of what this document is?

9 A. It's a chain of custody
10 sheet. It says samples from J&J museum,
11 collected 2/22/18. This is not the set
12 of sheets I signed.

13 Q. Okay. This does indicate
14 that for the -- as you indicated samples
15 from the J&J museum collected on
16 February 22, 2018. Those samples in
17 boxes were transferred from a
18 representative of DBR to Alliance
19 Technologies; is that correct, if you
20 look at the chain of custody line?

21 A. That is what it says on the
22 document.

23 Q. Okay. Are you aware of
24 whether or not in between the time you

1 transferred the documents to DBR and they
2 were subsequently transferred to Alliance
3 Technologies there was anything that was
4 done to the samples?

5 A. I am not aware of any. I
6 have no information on that.

7 Q. Are you aware of whether or
8 not the boxes that are listed here were
9 opened?

10 A. I do not know.

11 Q. Are you aware of whether
12 there was any testing that was done on
13 the product?

14 A. Ultimately? Or --

15 Q. No, in between --

16 A. I do not know.

17 Q. In between --

18 A. I do not know.

19 Q. In between the period of
20 time of February 22nd and March 2nd.

21 A. I do not know.

22 (Document marked for
23 identification as Exhibit
24 Gurowitz-12.)

1 BY MR. LAPINSKI:

2 Q. I'm going to hand you a
3 document that's been marked as
4 Exhibit 12. The first Bates number on
5 this group of documents is JNJTALC005 --
6 actually you know what? You've got to
7 bring them all back in for a second. I
8 apologize. I have them the wrong way.

9 I'm going to give you just
10 that document that's marked as
11 Exhibit 12.

12 Ms. Gurowitz, have you seen
13 this photograph before?

14 A. I have not.

15 Q. Do you know what it's a
16 photograph of?

17 A. It is a photograph of
18 storage boxes.

19 Q. And do you know where this
20 photograph was taken?

21 A. I do not.

22 Q. Do you know whether it was
23 taken at a J&J facility?

24 A. I have no information. I do

1 not know that.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-13.)

5 BY MR. LAPINSKI:

6 Q. I'm going to hand you a
7 document that's being marked as
8 Exhibit 13.

9 Ms. Gurowitz, have you seen
10 this photograph before?

11 A. I have not.

12 Q. Are you aware of what it is
13 a photograph of?

14 A. It is a photograph of
15 storage boxes.

16 Q. Do you know where this
17 photograph was taken?

18 A. I do not.

19 Q. Is there anything on --
20 anything marked on the boxes in this
21 photograph that would enable you to
22 identify what these boxes are?

23 A. Well, there are Post-It
24 notes that say partial JBP-02 done,

1 partial JBP-06 done, 03 done, and 04
2 done. So presumably the contents of
3 these relate to Johnson's Baby Powder.

4 Q. But you don't know where
5 these pictures generated from?

6 A. I do not.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-14.)

10 BY MR. LAPINSKI:

11 Q. Okay. I'll give that to
12 you. And that's Exhibit 14.

13 Ms. Gurowitz, have you seen
14 this photo before?

15 A. I have not.

16 Q. Do you have an understanding
17 as to what that photograph is?

18 A. Again, it's a photograph of
19 storage boxes.

20 Q. And are you aware of where
21 that photograph was taken?

22 A. I am not.

23 Q. Are you aware of when that
24 photograph was taken?

1 A. I do not know when it was
2 taken.

3 Q. And as to the other
4 photographs that we've looked at which
5 would collectively be Exhibits 12, 13,
6 and 14, are you aware of when those
7 photographs may have been taken?

8 A. I am not aware of when they
9 would have been taken.

10 (Document marked for
11 identification as Exhibit
12 Gurowitz-15.)

13 BY MR. LAPINSKI:

14 Q. I'm going to hand you
15 Exhibit 15.

16 Ms. Gurowitz, have you seen
17 this photograph before?

18 A. I have not.

19 Q. Are you aware of where this
20 photograph was taken?

21 A. I am not aware of that.

22 Q. Are you aware of when it was
23 taken?

24 A. I do not know when it was

1 taken.

2 Q. And do you have any
3 information -- strike that.

4 Do you have any information
5 as to who may have taken this photograph?

6 A. I do not know that.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-16.)

10 BY MR. LAPINSKI:

11 Q. I've marked this photograph
12 as Exhibit 16.

13 Have you seen this
14 photograph before?

15 A. I have not.

16 Q. Are you aware of when this
17 photograph was taken?

18 A. I don't have any information
19 about when it was taken.

20 Q. And are you aware of where
21 this photograph was taken?

22 A. I do not know where it was
23 taken.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-17.)

3 BY MR. LAPINSKI:

4 Q. I've handed you what's been
5 marked as Exhibit 17.

6 Have you seen this
7 photograph before?

8 A. I have not.

9 Q. Okay. Are you aware of when
10 this photograph was taken?

11 A. I am not.

12 Q. Are you aware when the
13 photograph was taken?

14 A. I am not.

15 (Document marked for
16 identification as Exhibit
17 Gurowitz-18.)

18 BY MR. LAPINSKI:

19 Q. I'm handing you a document
20 that's being marked as Exhibit 18. I'll
21 ask you to take a minute or two to review
22 that document.

23 A. Sure.

24 Q. All set?

1 A. Yes.

2 Q. Okay. I've handed you a --
3 before I get to the document.

4 Ms. Gurowitz, how many offsite storage
5 facilities does J&J have for where talc
6 samples are stored?

7 A. Are you talking about -- if
8 I can ask you to clarify. Physical
9 facilities or vendors?

10 Q. Let's start with vendors.

11 A. I believe that Iron Mountain
12 is Johnson & Johnson's offsite storage
13 vendor for anything the company stores
14 offsite.

15 Q. And do you know how long
16 Iron Mountain has been Johnson &
17 Johnson's storage company?

18 A. I do not know that.

19 Q. And just for purposes of
20 clarification, when we say Iron Mountain
21 is Johnson & Johnson's storage company,
22 are we referring to both Johnson &
23 Johnson defendants?

24 A. I believe so.

1 Q. The talc samples that are
2 maintained in the museum, to whom do
3 those talc samples belong?

4 A. The ones that are in the
5 corporate archives?

6 Q. Yes.

7 A. Those are property of
8 Johnson & Johnson.

9 Q. Okay. And how about the
10 offsite samples that are maintained --

11 A. In the offsite storage?

12 Q. Yes.

13 A. Those are property of
14 Johnson & Johnson Consumer.

15 Q. And I don't know if I asked
16 you this. Do you know for how long Iron
17 Mountain has been the offsite storage
18 facility for Johnson & Johnson?

19 A. I do not know that.

20 Q. Do you know which
21 location -- strike that.

22 Do you know which Iron
23 Mountain location the Johnson & Johnson
24 offsite samples were stored at?

1 A. I believe there are two in
2 New Jersey that they were stored at. One
3 is in Monroe, and the other is in
4 Freehold.

5 Q. And have you ever been to
6 either of those locations?

7 A. I have not.

8 Q. Do you know how long the
9 offsite samples have been stored at the
10 Iron Mountain facility?

11 A. I do not know. The transfer
12 sheets, I have seen from 1982. So they
13 were sent to Leahy Business Archives. So
14 at some point they must have been
15 transferred to Iron Mountain when
16 Johnson & Johnson must have at some point
17 switched providers.

18 Q. You said those transfer
19 sheets were from 1982?

20 A. Yes.

21 Q. When was it that you saw
22 those transfer sheets?

23 A. During the process of trying
24 to put together a chain of custody for

1 the offsite samples that were labeled
2 marketing.

3 Q. Is it fair to say that the
4 transfer sheets from 1982 were used by
5 you in order to prepare yourself for the
6 deposition today?

7 A. Yes.

8 Q. Did they provide you with
9 background in regard to the chain of
10 custody of the museum samples?

11 A. They helped shed some light
12 on a very tiny piece of the chain of
13 custody for just the samples marked
14 marketing and offsite storage.

15 Q. So the 1982 transfer sheets
16 did not relate to any of the research and
17 development samples that were maintained
18 in offsite storage?

19 A. No, they do not appear to.
20 Just the marketing ones.

21 Q. And it's your understanding
22 that those transfer sheets document the
23 transfer of marketing samples from
24 Johnson & Johnson to the Leahy Business

1 Storage facility?

2 A. That is what they appeared
3 to do, yes. They are transfer sheets
4 listing items that were moved to offsite
5 storage for Leahy.

6 Q. And included in those items,
7 was it all of the marketing samples that
8 we've been discussing here on the offsite
9 storage list?

10 A. It was -- if not all, it was
11 certainly a good portion of them.

12 Q. Are you able to determine
13 with the information that you have in
14 front of you which marketing samples
15 would have not been included on that
16 transfer sheet?

17 A. In some cases, I can make a
18 correlation with marketing samples that
19 were included. In other cases, you can
20 get close enough to say this either could
21 or could not be included. But not in all
22 cases, there's not enough information
23 there.

24 Q. And upon what would you rely

1 in order to be able to get yourself as
2 close as possible as you indicated?

3 A. So I would compare the
4 information on the transfer sheet --
5 excuse me. I'm just going to find the
6 relevant sheet.

7 So I'm looking at Page 11883
8 under offsite storage. And so what I
9 would do is I look at --

10 Q. I'm going to interrupt you
11 for a second just so we can keep the
12 record straight. You are right now
13 referring to what is marked as Page 36 of
14 91, and it is Page ID 11883, correct?

15 A. That is correct.

16 Q. Okay. So go ahead.

17 A. So what I would do is look
18 at the information contained in the
19 columns that say label, date on
20 container, or wrapping medium, and
21 container volume which references how
22 much volume the container held. It would
23 have been material printed on the
24 container, and then tried to match it up

1 with items that were on the transfer
2 sheet to see if they correlated.

3 Q. Again, you're referring to
4 the 1982 transfer sheet, correct?

5 A. Correct.

6 Q. And you did not bring those
7 transfer sheets here with you today,
8 correct?

9 A. I did not.

10 MR. LAPINSKI: Counsel, I'm
11 going to make a request that those
12 transfer sheets be produced
13 because I don't think that --

14 MS. FOURNIER: They've been
15 produced.

16 MR. LAPINSKI: They've been
17 produced? Were they just recently
18 produced?

19 MS. FOURNIER: I don't they
20 were, no. They were previously
21 produced.

22 BY MR. LAPINSKI:

23 Q. Are you aware of how long
24 the offsite sample -- are you aware of

1 how long the offsite samples were in
2 storage at Leahy business?

3 A. Certainly since 1982. But I
4 do not have an ending date when they
5 ceased to be stored at Leahy.

6 Q. And do you know -- do you
7 know at what point of time -- do you know
8 what facility the offsite samples were
9 stored at just prior to being produced by
10 Johnson & Johnson?

11 A. I do not know what specific
12 facility, but I know there were two
13 facilities in New Jersey that they were
14 stored at. But I don't know which were
15 stored at either one.

16 Q. Is it -- is it fair to say
17 that prior to production by Johnson &
18 Johnson, they were at an Iron Mountain
19 facility?

20 A. It is -- the marketing
21 samples?

22 Q. Yes, the marketing samples.

23 A. It is fair to say that.

24 Q. And do you know at what

1 point in time the marketing samples were
2 moved from storage in Leahy business to
3 storage at Iron Mountain?

4 A. I do not know. We don't
5 have the records that indicate that.

6 Q. Are you familiar at all with
7 the Leahy storage facility?

8 A. I am not.

9 Q. Do you know where it's
10 located?

11 A. I do not.

12 Q. Are you aware of the
13 contractual relationship that Johnson &
14 Johnson had with the Leahy storage
15 facility?

16 A. I am not aware of the
17 specific contractual relationship. But
18 at the time, since the items were moved
19 there, they would have been the storage
20 vendor for the company.

21 Q. And is it -- would it be
22 your position that as a storage vendor of
23 Johnson & Johnson, Leahy Business would
24 not open any of the boxes that it was

1 storing on behalf of Johnson & Johnson?

2 MS. FOURNIER: Objection.

3 THE WITNESS: That -- that
4 would be a question for our
5 records management folks. I don't
6 know what the terms of the
7 contract with them was.

8 BY MR. LAPINSKI:

9 Q. Are you aware of any reason
10 why representatives of Leahy business
11 would go into boxes that were being
12 stored at this facility?

13 A. Again, I -- that would be a
14 question for records management folks.
15 They manage all of the offsite storage.

16 Q. As it relates to chain of
17 custody, is there any reason why you
18 would believe that while the -- while the
19 samples were being stored at Leahy
20 business, they were tampered with at all?

21 A. I have no information about
22 that.

23 Q. And do you know how to spell
24 Leahy in Leahy business?

1 A. I believe it's L-E-A-H-Y or
2 something very close to that.

3 Q. I don't know whether or not
4 I asked this question, but are they a New
5 Jersey organization?

6 A. That, I do not know.

7 Q. Okay. Do you know if the
8 facilities are located in New Jersey?

9 A. That, I don't know. I don't
10 think they're -- I'm not even sure they
11 are still in business actually.

12 Q. When the marketing samples
13 were sent to Leahy business, where were
14 they sent from?

15 A. The marketing samples had
16 been sent, as we've established by
17 looking at the other documents, in 1982.
18 They were closing the Kilmer Museum.
19 They were sent back to the operating
20 unit, so it would have been someone at
21 the consumer company who would have sent
22 them to offsite storage.

23 Q. Is it fair to say that if
24 Leahy had to open any of the boxes that

1 were in storage for Johnson & Johnson
2 they would have notified Johnson &
3 Johnson beforehand?

4 MS. FOURNIER: Objection.

5 THE WITNESS: That, again,
6 would have been part of whatever
7 agreement they had with our
8 records management folks.

9 BY MR. LAPINSKI:

10 Q. As the corporate
11 representative for Johnson & Johnson
12 testifying on chain of custody, is
13 there -- do you have any knowledge of
14 Leahy business tampering with any of the
15 boxes that it held in storage?

16 A. Again, that's sort of --
17 although I am -- I've researched chain of
18 custody, the relationship with our
19 records management organization is
20 outside sort of the area that I look at.

21 So if -- so I don't know
22 what the relationship was, if they had to
23 open a box, did they have to notify
24 records management. I do not know.

1 Q. In your preparation for this
2 deposition and research that you did in
3 order to prepare yourself to testify on
4 chain of custody, do you have any
5 information that would indicate that
6 Leahy Business had at all opened and
7 tampered with the marketing samples that
8 were stored offsite?

9 A. We don't have any
10 information about Leahy Business, what
11 Leahy Business did with the boxes they
12 were storing.

13 Q. And, again, you previously
14 indicated that you don't know when the
15 boxes were transferred to Iron Mountain,
16 correct?

17 A. No. And when I asked the
18 folks I talked to in the marketing group,
19 they -- before it was discovered that
20 these boxes were in offsite storage, they
21 didn't even know they had existed, they'd
22 been there so long.

23 Q. They had been there so long
24 meaning they'd been --

1 A. Since 1982.

2 Q. I'm sorry. Let me -- let me
3 finish my --

4 A. I'm sorry.

5 Q. That's okay.

6 When you say they had been
7 there so long, they had been at Iron
8 Mountain so long?

9 A. They had been in offsite
10 storage so long.

11 Q. Just in offsite storage so
12 long?

13 A. Yes.

14 Q. If you look at the document
15 that I have given you which we marked as
16 Exhibit -- is that 18?

17 A. Yes.

18 Q. The Iron Mountain documents?

19 A. Mm-hmm.

20 Q. Have you ever seen these
21 documents before?

22 A. I believe I have. If not,
23 it was something very similar.

24 Q. Okay. What's your

1 understanding of what these documents
2 are?

3 A. My understanding is these
4 are internal Iron Mountain records.

5 Q. Did you review these records
6 in preparation for your testimony today?

7 A. If this is the same set of
8 records, then yes, I've seen them before.

9 Q. Okay. And when was the
10 first time that you saw them?

11 A. Maybe just a -- two weeks
12 ago maybe, something in that time frame.
13 So very recently.

14 Q. If you would take a look at
15 the description information that's about
16 a third of the way down the page. And if
17 you see, there is an SKP box/barcode
18 number?

19 A. Mm-hmm.

20 Q. Okay. Do you know what that
21 number represents?

22 A. I do not. But I can make an
23 educated inference that it represents a
24 unique number for a particular box.

1 Q. Okay. If you would now go
2 back to Exhibit 16, which is one of the
3 photographs. If you would look in the
4 upper left-hand corner of that
5 photograph, there is a box that has a
6 barcode number of 15140487.

7 Do you see that?

8 A. I do.

9 Q. And does that number
10 correspond to this Iron Mountain shipment
11 statement?

12 A. It corresponds to the
13 barcode number on the statement.

14 Q. Okay. That particular box
15 that ends with 0487 in the picture, is
16 there any way that we're able to identify
17 the contents of that box?

18 A. It says partial JBP. So one
19 can infer that there might be Johnson's
20 Baby Powder in it.

21 Q. But you don't -- as you sit
22 here, you're not able to make that
23 determination other than making the
24 assumption based upon that?

1 A. Not having seen the contents
2 of the box or an exact listing of the
3 contents, I cannot say.

4 Q. Okay. If you would look at
5 the bottom of the first page of
6 Exhibit 18 where it has a box history.

7 A. Mm-hmm.

8 Q. And if you start at the
9 bottom, you'll see it says, "12/12/94
10 received at Iron Mountain"?

11 A. Mm-hmm.

12 Q. Above that it says, "7/26/96
13 checked out."

14 Do you know who Hernando
15 Arbelaez is?

16 A. I do not.

17 Q. Do you know why if at all
18 that particular box may have been checked
19 out by Johnson & Johnson in July of 1996?

20 MS. FOURNIER: Objection.

21 THE WITNESS: We don't know
22 that that represents a checkout by
23 Johnson & Johnson because we don't
24 know if Hernando Arbelaez was a

1 Johnson & Johnson employee or an
2 Iron Mountain employee.

3 BY MR. LAPINSKI:

4 Q. Do you know of any reason
5 why anyone other than a representative of
6 Johnson & Johnson would be able to check
7 a box out from Iron Mountain that was a
8 Johnson & Johnson box?

9 MS. FOURNIER: Objection.

10 THE WITNESS: Well,
11 presumably some of -- some of
12 these could represent internal
13 movement, you know, moving things
14 from one place to another in their
15 storage facility.

16 BY MR. LAPINSKI:

17 Q. Well, that's a presumption
18 that you're making though? You don't
19 know that?

20 A. Well, you'd have to
21 determine who these contact folks were,
22 whether they were Johnson & Johnson
23 people or Iron Mountain people.

24 Q. Okay. Let's go to -- let's

1 jump up on this to September 21st, 2017,
2 which is on the box history the last time
3 the box was checked out.

4 A. Mm-hmm.

5 Q. Do you know who AnneMarie
6 Braman is?

7 A. I do not.

8 Q. Okay. In September of 2017,
9 would offsite samples have been part of
10 your responsibility as the J&J historian?

11 A. No, they would not.

12 Q. Okay. Do you as the J&J
13 historian use Iron Mountain for the
14 storage of any offsite samples?

15 A. No.

16 Q. Okay. Did you speak with
17 anybody in regard to offsite samples and
18 the storage policies for those samples at
19 Iron Mountain?

20 A. I spoke with Sarita Finnie
21 and Barbara Brewer about the marketing
22 samples. Also Mark Zappa and Lorena
23 Telofski. And they had told me that it
24 was not the practice of marketing or

1 quality or R&D to send samples to offsite
2 storage, that it would not be part of
3 their regular practice to do so.

4 Q. But these were samples that
5 were maintained by Iron Mountain on
6 behalf of J&J, correct?

7 A. That's correct.

8 Q. And if I understand your
9 testimony correctly, none of the people
10 that you spoke to had an awareness of how
11 these boxes were maintained at Iron
12 Mountain?

13 A. No. I think it actually
14 came as a surprise to them that there
15 were boxes of samples there.

16 Q. And if you could remind me
17 again. You had stated that as far as the
18 relationship between Johnson & Johnson
19 and Iron Mountain, there was an
20 individual within Johnson & Johnson who
21 would have a better understanding as to
22 the contractual relationship between the
23 two organizations, correct?

24 A. Johnson & Johnson has a

1 worldwide records management group. And
2 that's a large organization, as you might
3 imagine. And so the people in that group
4 would partner with people in different
5 areas of the company. So somebody --
6 folks in that group would have an
7 understanding of the contract -- the
8 contract we have with the service
9 provider.

10 Q. So as you sit here, you have
11 no knowledge of how the boxes were
12 maintained at Iron Mountain?

13 A. I do not.

14 Q. Okay. Do you know whether
15 or not when the boxes were sent to the
16 Iron Mountain facility they were sealed?

17 A. I do not have that
18 information. I can say though these just
19 look like they are banker boxes. It
20 doesn't look like there are seals on
21 them. You can see from the photos.

22 Q. Okay. You don't know where
23 those photographs were taken though?

24 A. I do not.

1 Q. Okay. So you don't know if
2 they were photographs of the boxes at
3 Iron Mountain?

4 A. I don't know.

5 Q. Okay. And do you know who
6 within worldwide records management group
7 might be the best person to speak to in
8 regard to the maintenance of the offsite
9 samples at Iron Mountain?

10 A. I do not. It would be
11 whoever works with the consumer company.

12 Q. Meaning Johnson & Johnson
13 Consumer Incorporated?

14 A. Yeah, there would be
15 somebody that -- who they would partner
16 with in records management if they needed
17 to store things offsite.

18 Q. In the preparation that you
19 did in order to testify as to chain of
20 custody for these offsite samples, do you
21 have any knowledge of these boxes being
22 tampered with while they were at --
23 strike that.

24 Do you have any knowledge of

1 the offsite samples being tampered with
2 while they were in the control of Iron
3 Mountain?

4 A. We -- I do not have any
5 information about how these offsite
6 samples were treated or stored when they
7 were at Iron Mountain.

8 Q. Do you know who Kelly Starr
9 is?

10 A. I do not.

11 Q. Do you know who Samantha
12 Floyd is?

13 A. I do not.

14 Q. Do you have any reason to
15 believe that the offsite samples stored
16 at Iron Mountain would have been tampered
17 with?

18 A. When you say tampered, can
19 you clarify?

20 Q. In any way damaged, opened,
21 accessed at all by Iron Mountain?

22 A. Well, without knowing
23 exactly what these checkouts refer to,
24 are they just internal moves because they

1 need to move things around in their
2 storage facility or do they -- it's hard
3 to say. So I do not have enough
4 information to have an opinion about
5 that.

6 Q. Are you aware of the names
7 of the individuals who would have sent
8 samples to offsite storage?

9 A. Would you -- can I ask what
10 time frame?

11 Q. At any time frame. Are you
12 aware of any individuals who would have
13 said offsite marketing samples to Iron
14 Mountain?

15 A. No. When I talked to Sarita
16 Finnie and certainly Barbara Brewer who
17 has been with the company a long time,
18 they didn't know these samples existed in
19 offsite storage. None of us knew they
20 had been there because they had been
21 there so long. So I do not know of
22 anyone who would have done it, and both
23 of them said that it was not the policy
24 or practice of marketing to send samples

1 to offsite storage.

2 Q. And would the same hold true
3 for quality assurance?

4 A. Yes.

5 Q. And would the same hold true
6 for research and development?

7 A. Yes.

8 Q. Going back to the Iron
9 Mountain records, which is Exhibit 18.
10 It indicates that the customer is
11 Johnson & Johnson Consumer Products,
12 correct?

13 A. That is what it says, yes.

14 Q. Do you have any reason to
15 believe that a non-Johnson & Johnson --
16 any non-Johnson & Johnson personnel would
17 have been able to send sample boxes to
18 Iron Mountain for storage?

19 MS. FOURNIER: Objection.

20 THE WITNESS: Do you mean
21 somebody who's not an employee of
22 either Johnson & Johnson or the
23 consumer company --

24 BY MR. LAPINSKI:

1 Q. Correct.

2 A. -- or just the consumer
3 company?

4 Q. Both.

5 A. No, I don't think so. Not
6 under these parameters, no. I mean, that
7 being said I'm sure there are a lot of
8 companies who use Iron Mountain.

9 (Document marked for
10 identification as Exhibit
11 Gurowitz-19.)

12 BY MR. LAPINSKI:

13 Q. I'm going to hand you a
14 document that's been marked as
15 Exhibit 19. If you would review that
16 document and just let me know when you're
17 finished I'm sorry are you ready.

18 I apologize. I thought I
19 asked you to let me know when you're
20 ready.

21 A. Oh, I'm sorry.

22 Q. No, that's okay.

23 Ms. Gurowitz, I've handed
24 you Exhibit 19. Is this a document that

1 you've ever seen before?

2 A. No.

3 Q. The first page of this
4 document is Bates-stamped
5 JNJTALC00536657. And it is a chain of
6 custody document.

7 Ms. Gurowitz, if you would
8 look in the upper left-hand corner under
9 description, it says JBP Sample 01. I
10 believe that says partial next to it. Do
11 you know what that refers to?

12 A. Not -- I do not know exactly
13 what that refers to.

14 Q. Do you know whether or not
15 it corresponds to sample JP -- JBP-001 on
16 the sample list that we've been
17 discussing?

18 A. Let me take a look. I'm
19 sorry I'm having a hard time to get it
20 with the double-sided it. It continues
21 to throw me off. I think these are
22 slightly out of order somehow.

23 Just to be clear, you're
24 referring to the -- oh, that's 91. I'm

1 sorry.

2 Q. I'm looking at page ID 11865
3 if that helps.

4 A. 11865. Okay. I've got it.
5 The one that's JBP-001?

6 Q. Yes.

7 A. Well, this says JBP Sample
8 01 partial, and this says JBP-001 full.

9 So if this refers to a
10 container that's partially full, it does
11 not match up with this one, because this
12 states that the container is full.

13 Q. Okay. If you look -- and
14 it's a difficult copy looking at
15 Exhibit 19. But going across the
16 different columns, there is a column for
17 packing contents that on this first page
18 is blank. And then if you see the second
19 column it says time and date. Can you
20 make that out? Actually, date and time.
21 Are you able to make that out?

22 A. This one, yes.

23 Q. And then the next one after
24 that says "released by."

1 Do you see that?

2 A. I do.

3 Q. Okay. Do you know what IT
4 lead is?

5 A. I do not. IT usually refers
6 to information technology. But I don't
7 know what it means in this case.

8 Q. How about in the received by
9 section, "entrusted advisors." Do you
10 know who entrusted advisors are?

11 A. I do not.

12 Q. If you go to the third line
13 down, the entry dated February 21st,
14 2018. There is an entry there, it looks
15 like initials. And under that is QA. Do
16 you know who those initials would be?

17 A. Can I ask you to clarify?
18 You are looking for the signature column?

19 Q. Yeah.

20 A. The signature directly
21 above --

22 Q. In the "received by" column
23 there are initials and a signature, and
24 below that it says QA. Okay.

1 A. I do not know. I can't make
2 out the handwriting. It could be an S or
3 an A. I can't really tell from the
4 writing.

5 Q. Okay. If you go to the next
6 page, under description it says JBP
7 Sample Number 01. Do you have any idea
8 what that refers to?

9 A. I do not.

10 Q. If you turn to the next
11 page, which has Bates numbers ending in
12 659. The description is, "JBP sample
13 partial Number 2 done." Do you know what
14 that refers to?

15 A. Not offhand. It's possible
16 that it refers to JBP-002. But I could
17 not say without more information.

18 Q. Okay. What additional
19 information would you need in order to be
20 able to say?

21 A. Well, so, on this -- the
22 chain of custody sheet, it's listed as
23 JBP Sample 02. But the sample numbers on
24 the sheet of all of the samples of two

1 zeros before the other numbers. So they
2 don't exactly correspond.

3 Q. On the following page, JBP
4 Sample 02, do you know what that refers
5 to?

6 A. Without more information I
7 could not say.

8 Q. On the following page, JBP
9 Sample 03 partial, do you know what that
10 refers to?

11 A. Again, without more
12 information, I could not say.

13 Q. Do you know whether any of
14 these are referring to offsite samples
15 that have been produced and included on
16 the sample list?

17 A. Without more information I
18 could not say, again.

19 Q. If you could -- if you could
20 take a minute and just look at the
21 various pages that are included in this
22 document, and in particular the
23 description page of each of these, and
24 tell me whether or not there are any

1 descriptions on there that can correspond
2 to the sample lists that we have been
3 talking about today?

4 A. Again, without more
5 information, I couldn't say because the
6 numbering system is different on the
7 chain of custody list. And the sample
8 list. And the chain of custody list does
9 not provide information, like, for
10 instance, what it says on the label or a
11 date if given. So I don't have enough
12 information to make that determination.

13 Q. You had testified earlier in
14 regard to the PTI Royston samples that
15 you had had a conversation with an
16 individual in regard to those samples,
17 correct?

18 A. That is correct.

19 Q. And who was it that you
20 spoke to in regard to the PTI samples?

21 A. A woman named Janet Stanish
22 at PTI. I took an approximate guess on
23 the spelling on the last name. I can't
24 confirm that it's spelled exactly how I

1 wrote it.

2 Q. And do you know what
3 Ms. Stanish's position is at PTI?

4 A. I do not know what her title
5 is.

6 Q. And what was it that she
7 told you in regard to the samples that
8 were maintained for Johnson & Johnson at
9 PTI?

10 A. She told me that as per
11 their contract, and it's listed in the
12 contracts, that they need to maintain
13 samples as per the contract for either
14 four years from date of manufacture or
15 one year after date of expiration,
16 whichever comes first.

17 She said that the room, the
18 retaining room they kept them in was in
19 fact located at PTI. They were kept in,
20 you know, on shelves in boxes in
21 containers and there was climate control.

22 And then she told me that
23 when the samples were requested, if there
24 was more than one bottle of a product,

1 they were able to send an entire bottle,
2 because as part of their contractual
3 obligation with Johnson & Johnson they
4 need to retain samples.

5 So for instance, if, say,
6 there were two bottles of a particular
7 sample, they were able to keep one bottle
8 as per the contract and send the other.

9 If, however, there was only
10 one bottle, they had to open and divide
11 that sample and send part of that sample.

12 Q. And when you say when the
13 samples were requested, are you referring
14 to the point in time where the samples
15 were requested pursuant to the order that
16 was entered by the court?

17 A. Yes.

18 Q. Are you aware of any time
19 prior to the -- the request being made
20 pursuant to this order that PTI had
21 released samples to anybody?

22 MS. FOURNIER: Objection.

23 Outside the scope.

24 THE WITNESS: I am not,

1 because I was only trying to track
2 chain of custody for the items
3 listed in this list.

4 BY MR. LAPINSKI:

5 Q. To the extent that PTI
6 maintained multiple samples from the same
7 Johnson Baby Powder lot, are you aware of
8 what other samples were sent out for
9 testing?

10 MS. FOURNIER: Objection.
11 Outside the scope.

12 THE WITNESS: I am only
13 aware of the samples that are
14 included as part of this list,
15 because that's what I was
16 researching the chain of custody
17 for.

18 BY MR. LAPINSKI:

19 Q. You had indicated that to
20 the extent that there was only one sample
21 available, and if you look at Page ID
22 11911 as a point of reference.

23 A. I am there.

24 Q. Actually, strike that.

1 Do you have any independent
2 knowledge of the samples that were
3 maintained at PTI Royston on behalf of
4 J&J?

5 A. Other than tracking them for
6 the purposes of establishing chain of
7 custody for what is on this list, no.

8 Q. And you did that only for
9 purposes of this deposition today,
10 correct?

11 A. Correct.

12 Q. Maintaining records on PTI's
13 samples is not part of your job
14 responsibility as a J&J historian,
15 correct?

16 A. No, it is not.

17 Q. Who other than yourself
18 within Johnson & Johnson would have
19 knowledge of the samples that are
20 maintained at PTI?

21 MS. FOURNIER: Objection.
22 Outside the scope.

23 THE WITNESS: I don't know
24 people's names. But it would be

1 whoever that they work with on the
2 Johnson & Johnson side.

3 BY MR. LAPINSKI:

4 Q. And the samples that were
5 maintained by PTI on behalf of Johnson &
6 Johnson were in sealed Johnson & Johnson
7 containers, correct?

8 MS. FOURNIER: Objection.

9 THE WITNESS: The samples
10 were -- they were in packages, in
11 Johnson's Baby Powder packages.
12 So I have not seen photographs of
13 those packages. So I couldn't
14 tell you if they were sealed or
15 not.

16 BY MR. LAPINSKI:

17 Q. Is it your understanding
18 that the samples maintained by PTI on
19 behalf of Johnson & Johnson were in
20 sealed packages?

21 A. That, I do not know. I
22 have -- again, I have not seen
23 photographs of the actual samples, so I
24 do not know.

1 (Document marked for
2 identification as Exhibit
3 Gurowitz-20.)

4 BY MR. LAPINSKI:

5 Q. I'm going to mark this
6 document as Exhibit 20. Ms. Gurowitz,
7 I've handed you a Federal Express
8 shipping -- shipping receipt.

9 The question I have for you
10 is that, in the upper left-hand corner,
11 the shipment is from Kelly Smith at
12 Bureau Veritas. Do you know what Bureau
13 Veritas is?

14 A. I do not know what Bureau
15 Veritas is. It's in Kennesaw, Georgia.
16 When I spoke with Janet Stanish at PTI,
17 she told me initially their samples were
18 sent to a lab in Georgia before it was
19 determined that they would be examined by
20 a lab in New Jersey.

21 So I could -- although I
22 could make a personal educated inference
23 that that might represent the facility in
24 Georgia. But I do not have factual

1 information that I could point to
2 regarding that.

3 (Document marked for
4 identification as Exhibit
5 Gurowitz-21.)

6 BY MR. LAPINSKI:

7 Q. I'm going to hand you a
8 document that's marked as Exhibit 21. If
9 you could review that document and just
10 let me know after you've had an
11 opportunity to review it.

12 A. I have reviewed it.

13 Q. Okay. Do you know what this
14 document is?

15 A. It is laboratory chain of
16 custody form. It says so right at the
17 top.

18 Q. Have you seen this document
19 before?

20 A. I have not.

21 Q. Okay. As indicated, this
22 document is entitled "Laboratory Chain of
23 Custody Form."

24 And it says it's from PTI

1 Royston, LLC, to Maxxam Analytics,
2 M-A-X-X-A-M, Analytics in Kennesaw,
3 Georgia. And it's a relinquish date of
4 9/12/17 of samples.

5 Would you agree with that?

6 A. That is what it says on the
7 paper, yes.

8 Q. And if you would take a
9 minute just to review these samples that
10 are included as part of this list to
11 confirm that the samples on this list
12 include all samples that are part of the
13 PTI inventory that has been produced in
14 this litigation?

15 A. Did you want me to look at
16 each one or just --

17 Q. Actually why don't we do it
18 this way. I'm going to give you another
19 document that's Exhibit 22.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-22.)

23 BY MR. LAPINSKI:

24 Q. And this is a second

1 laboratory chain of custody form, Bates
2 Number JNJTALC00553768. And it's, like
3 Exhibit 21, it's dated September 12th,
4 2017, from PTI Royston to Maxxam
5 Analytics.

6 Would you agree?

7 A. Yes.

8 Q. As the representative for
9 Johnson & Johnson here to testify on
10 chain of custody, are you aware of PTI
11 sample, included on this sample list
12 being sent from PTI Royston to Maxxam
13 Analytics in September of 2017?

14 A. I am aware that samples were
15 sent from PTI. I did not know the name
16 of the lab in Georgia till now.

17 Q. Is it your understanding
18 that Maxxam Analytics is a lab?

19 A. This is the first time I'm
20 seeing the name. So I -- without looking
21 them up or confirming that, I could not
22 confirm just by looking at the paper.

23 Q. And do you know who Alan
24 Seagrave is?

1 A. I do not.

2 Q. Do you know why the PTI
3 samples would have been sent from PTI
4 Royston in Georgia to Maxxam Analytics in
5 September of 2017?

6 A. Well, presumably it was per
7 a request for this matter. Janet Stanish
8 at PTI did tell me that they were
9 requested to send their samples to a lab
10 in Georgia, and then it was decided that
11 they would in fact be reviewed at a lab
12 in New Jersey.

13 Q. There was -- there was a
14 request to PTI to send the samples to a
15 laboratory in September of 2017?

16 A. She did not tell me exactly
17 what the date of the request was. But
18 she said they were requested to send
19 samples.

20 Q. And do you know who made
21 that request?

22 A. I do not know the specific
23 person who made that request to them.

24 Q. We had talked briefly

1 earlier today in regard to the process
2 that PTI followed when preparing the
3 samples for shipping.

4 Do you recall that?

5 A. Yes.

6 Q. Okay. What is your
7 understanding of how PTI Royston prepared
8 the PTI samples on our sample list for
9 shipping in September of 2017 when they
10 sent them to Maxxam Analytics?

11 A. My understanding from
12 speaking to Janet at PTI was that if more
13 than one sample existed of any given
14 bottle, that they were able to send a
15 full sample because they were still able
16 to send a sample and meet their
17 contractual obligation to Johnson &
18 Johnson to retain a sample.

19 In the case that there was
20 only container of a sample, in order to
21 meet both obligations, they had to divide
22 that sample, and so they did do that.
23 And they put the section they sent to the
24 lab in a sealed cup.

1 Q. And as far as the shipping
2 of the products, all of the samples from
3 PTI to Maxxam Analytics, are you aware of
4 how those samples were packed for
5 shipping?

6 A. She told me they were packed
7 in boxes. In her words, they were
8 palletized, which means they were put on
9 pallets. And they actually drove them
10 from PTI to the lab in Georgia. She said
11 they were FedExed from the Georgia
12 facility to New Jersey.

13 Q. And do you have any
14 information that would lead you to
15 believe that during that process any of
16 the PTI samples were tampered with?

17 A. I do not have information to
18 indicate that. I was trying to trace
19 their chain of custody from PTI through
20 every step till they got to the lab.

21 So I was looking at, you
22 know, who had them, had they packed them,
23 how they got from one place to another.

24 Q. Are you aware of whether or

1 not the samples that were delivered to
2 Maxxam Analytics were unpacked?

3 A. I do not know.

4 Q. Do you know whether or not
5 those samples were opened when they were
6 at Maxxam Analytics?

7 A. I do not know.

8 Q. Do you know whether any of
9 those samples were tested while they were
10 at Maxxam Analytics?

11 A. I do not know.

12 Q. Do you know whether any
13 samples were destroyed while they were at
14 Maxxam Analytics?

15 A. I do not know. I can't
16 imagine they would have destroyed them
17 though.

18 Q. But you have no knowledge?

19 A. I do not.

20 Q. You have no knowledge
21 whether they were tested either?

22 A. No.

23 Q. Do you have any idea what if
24 anything at all was done with the samples

1 when they were at Maxxam Analytics?

2 A. It's my understanding they
3 sent them to Maxxam Analytics. They were
4 there for a period of time. It was then
5 decided that they would be looked at at a
6 lab in New Jersey, and so Maxxam
7 Analytics Federal Expressed them to the
8 facility in New Jersey.

9 Q. Do you know whether there's
10 any relationship between Maxxam Analytics
11 and Bureau Veritas?

12 A. I do not.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-23.)

16 BY MR. LAPINSKI:

17 Q. We'll mark this as
18 Exhibit 23. If you could just take a
19 look at that document and let me know
20 whether you've seen that document before.

21 A. Unless you showed it to me
22 earlier today, I do not believe I've seen
23 this.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-24.)

3 BY MR. LAPINSKI:

4 Q. Okay. I'm also going to
5 mark Exhibit 24. Have you ever seen
6 Exhibit 24 before?

7 A. I don't believe I have.

8 Q. Exhibits 23 and 24 are
9 laboratory chain of custody forms,
10 correct?

11 A. That is what it says on the
12 documents.

13 Q. And both of the documents
14 show that there is laboratory -- that
15 there is a shipment going from Maxxam
16 Analytics in Kennesaw, Georgia to
17 Jonathan Chun at Alliance Technologies,
18 correct?

19 A. That is what it says on the
20 document, yes.

21 Q. Do you have an understanding
22 of the purpose of this document?

23 A. It's a chain of custody form
24 designed to document, just from looking

1 at the information on it, it would be
2 designed to document this transfer of
3 whatever is listed inside it from one
4 organization to the other.

5 Q. Do you have an understanding
6 that the PTI samples that are contained
7 on our sample list were transferred from
8 Maxxam Analytics to Alliance Technologies
9 in February of 2018?

10 A. That is what it says on the
11 document.

12 Q. And as the representative of
13 the Johnson & Johnson defendants
14 testifying in regard to chain of custody,
15 is that the date that the transfer
16 occurred?

17 A. According to the information
18 written here, yes.

19 Q. Are you aware of what if
20 anything was done with the PTI samples
21 for the five-month period of time that
22 they were at Maxxam Analytics?

23 A. I am not.

24 Q. Did you make any attempt

1 to -- in preparation for today's
2 deposition to determine what if anything
3 was done with those samples during that
4 five-month period of time?

5 A. I did not. When I spoke
6 with Janet, she said they -- they put
7 them on pallets, they drove them by truck
8 over to the lab in Georgia, and then it
9 was decided that they needed to be looked
10 at at a lab in New Jersey. And so they
11 were then FedExed.

12 But from the way she told it
13 to me, it didn't seem -- it sounded like
14 it was a much shorter time frame. So I
15 did not pursue that further, because it
16 seemed like it was a very sort of short
17 time frame where one thing followed from
18 the next.

19 MR. LAPINSKI: Why don't we
20 go off the record take a
21 five-minute break.

22 THE VIDEOGRAPHER: The time
23 is 3:08 p.m. We are off the
24 record.

1 (Short break.)

2 THE VIDEOGRAPHER: We are
3 back on the record at 3:27 p.m.

4 BY MR. LAPINSKI:

5 Q. Ms. Gurowitz, I'm going to
6 hand you a document that's been marked as
7 Exhibit 25.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-25.)

11 BY MR. LAPINSKI:

12 Q. There are several
13 photographs that were produced of a Baby
14 Powder container. If you could just take
15 a minute and review those and let me know
16 whether or not you've seen those
17 photographs before?

18 A. I have seen the photograph
19 of the front, but not the back and sides.

20 Q. Okay. What is your
21 understanding of what that is a
22 photograph of?

23 A. This is a photograph of a
24 Johnson's Baby Powder tin that was

1 manufactured and marketed in England. It
2 was one of a small handful of samples
3 provided by a Johnson & Johnson retiree
4 named John Hopkins.

5 Q. So would this be one of the
6 Hopkins samples that we've referred to
7 previously?

8 A. Yes.

9 Q. And are you able to identify
10 which of the samples on the sample list
11 these photos relate to?

12 A. Yes. If you give me a
13 moment to find that on the list.

14 Q. Sure.

15 A. Absolutely. I still can't
16 get used to the double-sided.

17 Q. Are these going to be on the
18 museum list or on the offsite sample
19 list? These are going to be on the
20 offsite sample list, correct?

21 A. Correct.

22 Q. Okay. It's going to be the
23 last two pages of the offsite sample
24 list. Page ID 1189 and 1190, if that

1 helps.

2 MS. FOURNIER: You can go
3 ahead.

4 THE WITNESS: Okay. This
5 looks like it would be the sample
6 that is referred to as UK Facility
7 2, because it is a metal container
8 from the early 1950s. The
9 photograph of the bottom has a
10 label that says early 1950s.

11 (Document marked for
12 identification as Exhibit
13 Gurowitz-26.)

14 BY MR. LAPINSKI:

15 Q. I'm going to hand you
16 Exhibit 26. I'll ask you to take a look
17 at those photos. And similarly we're
18 going to look to identify if that is one
19 of the Hopkins samples which one it is.

20 A. Judging by the photograph at
21 the bottom with the label it says late
22 1950s. This looks like it would be the
23 sample labeled UK Facility 3.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-27.)

3 BY MR. LAPINSKI:

4 Q. This is Exhibit 27. Take a
5 look at that and let me know if you've
6 ever seen those photographs before.

7 A. I have seen a photograph of
8 just the front of this container, not the
9 sides or top or bottom.

10 Q. And is it your understanding
11 that this is photographs of the -- one of
12 the Hopkins products as well?

13 A. It is labeled October '66
14 and UK Facility 4, sample number is
15 identified as saying October 1966 on the
16 container, so that would -- that would
17 correspond.

18 Q. If you would do me a favor.
19 If you could please turn to -- if you
20 look on the bottom right-hand corner with
21 the Bates number. The Bates number that
22 ends in 6825. And if you can describe
23 that picture for me, I would appreciate
24 it.

1 A. It is the picture of a top
2 of a container with the labeling separate
3 by the side. I have not seen this
4 artifact in person. So that's what I can
5 make out from the photograph.

6 Q. Are you familiar at any time
7 of Johnson & Johnson having a promotion
8 for a free trip to Disneyland that would
9 be able to be slid off of a Baby Powder
10 bottle?

11 A. I am not. But Johnson &
12 Johnson throughout a good portion of its
13 history was highly decentralized. That
14 would be something that was conducted in
15 the United Kingdom where this sample was
16 from. We don't have a representative --
17 a good representation of a wide variety
18 of artifacts, product artifacts from the
19 UK in the corporate archives collection.

20 So before these matters,
21 this is the first time I had seen this
22 particular packaging. So being
23 decentralized in this time, October of
24 1966, the UK would have done -- it

1 wouldn't have been a central thing that
2 was done necessarily in the States or all
3 over the world. The UK would have sort
4 of run its own promotions.

5 (Document marked for
6 identification as Exhibit
7 Gurowitz-28.)

8 BY MR. LAPINSKI:

9 Q. This is Exhibit 28. And if
10 you could just look at those pictures.
11 Let me know if you've ever seen those
12 pictures before.

13 A. I have seen the picture of
14 the front, so the first one on this.

15 Q. And what is your
16 understanding that that's a picture of?

17 A. This is a picture that it's
18 labeled on the bottom late 1940. It
19 would correspond to Sample Number UK
20 Facility 1.

21 (Document marked for
22 identification as Exhibit
23 Gurowitz-29.)

24 BY MR. LAPINSKI:

1 Q. I'm going to hand you a
2 document that's been marked as
3 Exhibit 29. Ms. Gurowitz, have you ever
4 seen that photograph before?

5 A. I believe so. There were
6 two that I looked at that had the
7 "Property of PPC Museum" on them. If you
8 look at the second in the set.

9 Q. And what is your
10 understanding of what the "Property of
11 PPC Museum" refers to?

12 A. So we don't have any records
13 relating to a museum, as we understand a
14 museum to be at Personal Products.
15 Personal Products is a historical
16 operating unit of Johnson & Johnson that
17 no longer exists.

18 At one point in time it
19 marketed Shower to Shower among other
20 products. It was located in Milltown,
21 New Jersey in a building that likely no
22 longer exists now either.

23 At some point in time, this
24 artifact belonged to or was labeled

1 property of whatever that was. And so we
2 don't know. It probably was not a museum
3 in the way that we think of museums or
4 the way the current Johnson & Johnson
5 museum power house is. It may have been
6 as simple as a case, the museum,
7 quote-unquote, in the UK that those four
8 UK samples were taken from, was a
9 glass-fronted case. So it may have been
10 something like that.

11 Q. And I'm sorry. You said --
12 what does PPC stand for?

13 A. PPC is an acronym for
14 Personal Products Corporation. It is a
15 no longer existing historical operating
16 unit of Johnson & Johnson.

17 Q. So it is a -- it was a
18 Johnson & Johnson entity?

19 A. At one point, yes.

20 Q. Okay. And if you look at
21 the label on the bottom. It says,
22 "Property of PPC museum, Milltown, New
23 Jersey." And it says, "Must be returned
24 to consumer affairs."

1 Do you know what that refers
2 to?

3 A. Presumably consumer affairs
4 was in charge of whatever the PPC museum
5 was.

6 Q. And would that be Johnson &
7 Johnson consumer affairs? Is that your
8 understanding?

9 A. Or PPC consumer affairs.

10 Q. But consumer -- consumer
11 affairs of a J&J entity?

12 A. Yes.

13 Q. At the top of that photo
14 there's a reference to Doyle/B&PD. Do
15 you know what that refers to?

16 A. I do not know what
17 Doyle/B&PD refers to.

18 Q. Okay. And you had said
19 earlier that you assumed this was housed
20 at PPC?

21 A. At one time. It has --
22 elsewhere on that upper label, it says
23 MDSE notice which stands for
24 merchandising notice. This may have been

1 something related to that policy that was
2 in place for a few decades that whenever
3 you change the packaging shape or the
4 label style, send a sample. That would
5 correspond to merchandising notices.

6 So this may reflect that
7 this was one of those. And it is from
8 1968. So it would fall inside those
9 parameters. So it is possible that this
10 was one of those items that resulted
11 in -- they did something, they changed
12 the label, changed the colors on the
13 label or something like that.

14 And then one point in time,
15 we don't know when, it belonged to
16 whatever the PPC museum in Milltown was.

17 Q. If you look at the first
18 page of the document, and it's indicated
19 that this is STS033.

20 Do you see that?

21 A. I do.

22 Q. And is it your understanding
23 that this is a photograph of the offsite
24 storage sample STS033?

1 A. Yes. The year corresponds.
2 I'm looking at that right now. It's on
3 Page 41 of 91 of the big list. And that
4 says it's -- STS033 is 1968. That
5 corresponds with the date on the label on
6 the back. So there we can make a
7 correlation.

8 Q. And is that an authentic
9 Shower to Shower container?

10 A. It looks to be from the
11 photograph.

12 Q. And is there any reason to
13 believe that that cap was removed from
14 the container at any time?

15 MS. FOURNIER: Objection.

16 THE WITNESS: I have no
17 information on that products back
18 then they didn't have seals.
19 Safety seems did not become a
20 thing until 1980s. No consumer
21 products really had them. So I
22 don't -- it certainly wasn't
23 sealed.

24 I don't have any information

1 about whether the cap was removed
2 or opened.

3 BY MR. LAPINSKI:

4 Q. Based upon your review of
5 the photograph, is there any evidence in
6 the photograph that the cap was removed
7 at any time?

8 MS. FOURNIER: Objection.

9 THE WITNESS: I cannot tell
10 from the photograph. I couldn't
11 tell -- I don't even know if you
12 could tell by looking at the
13 artifact. I can't see what the
14 top of it looks like. So I cannot
15 tell from just the photographs
16 here.

17 BY MR. LAPINSKI:

18 Q. Were you responsible -- were
19 you responsible for preparing this sample
20 for production?

21 A. No. This was from offsite
22 storage. So this was pulled in from
23 offsite storage.

24 Q. The samples that were pulled

1 in from offsite storage who was
2 responsible for preparing them for
3 production?

4 A. So when you say preparing
5 for production, do you mean doing all
6 this, labeling?

7 Q. Yes.

8 A. So they were -- they were
9 identified. I mean, they had -- as I
10 mentioned earlier, they had been there so
11 long that until the search commenced for
12 samples that might be located in offsite
13 storage or other places that nobody even
14 realized that these were there. And so
15 they were pulled in.

16 So this would have been --
17 they would have been requested by
18 somebody at the consumer company records
19 management. And this particular -- these
20 numbers, the STS033, the sample numbers
21 were signed by the legal folks. So this
22 would have been photographed by somebody
23 on the legal team.

24 Q. Do you know who at Johnson &

1 Johnson Consumer was responsible for
2 bringing the samples back from offsite
3 storage?

4 A. I do not know.

5 Q. Do you know who at Johnson &
6 Johnson Consumer was responsible for
7 taking the samples from the offsite
8 storage boxes and preparing them for
9 shipment to innovative technologies?

10 A. No, I do not know that.

11 Q. Do you know the process that
12 was used in order to transfer any of the
13 offsite samples from the offsite storage
14 facility to the lab in Eatontown?

15 A. I do not know that process.
16 When I was looking at tracing the chain
17 of custody, I was looking at tracing the
18 chain of custody from the other end,
19 not -- you know, not once they were
20 identified and pulled and sent to the
21 lab. I was looking at tracing the
22 historical chain of custody as to how
23 they got to offsite storage, where they
24 might have been before they got to

1 offsite storage. That's the side I was
2 looking at.

3 Q. Okay. And would that --
4 would that statement pertain to all of
5 the offsite storage samples that we've
6 talked about, other than the Ashton
7 samples, the Hopkins samples and the
8 sample that was left at your museum
9 security?

10 A. Yes.

11 MS. FOURNIER: Objection.

12 THE WITNESS: Sorry.

13 Yes, because that's the part
14 of the chain of custody that we
15 didn't have.

16 (Document marked for
17 identification as Exhibit
18 Gurowitz-30.)

19 BY MR. LAPINSKI:

20 Q. I'm going to hand you a
21 document that's been marked as
22 Exhibit 30. I apologize. That was not
23 stapled.

24 MS. FOURNIER: Can we go off

1 the record for a second?

2 THE VIDEOGRAPHER: The time
3 is 3:44 p.m. We are off the
4 record.

5 (Brief pause.)

6 THE VIDEOGRAPHER: We are
7 back on the record at 3:45 p.m.

8 BY MR. LAPINSKI:

9 Q. Excuse me, Ms. Gurowitz.
10 I've handed you what's been marked as
11 Exhibit 30. Have you seen that
12 photograph before?

13 A. I may have. I have looked
14 at a lot of them.

15 Q. And the first page of that
16 photograph has a Post-It note
17 representing that is sample STS036.
18 Based upon your review of the photograph,
19 does that comport with the sample list?

20 A. Based upon my review of the
21 photograph, it does comport with the
22 sample list. They're both noted from
23 being from 1975. And the product name,
24 the label name is the same, is

1 consistent.

2 Q. In your role as historian,
3 have you personally seen any of these
4 offsite samples?

5 A. No, I have not.

6 (Document marked for
7 identification as Exhibit
8 Gurowitz-31.)

9 BY MR. LAPINSKI:

10 Q. I'm going to hand you a
11 document that has been marked as
12 Exhibit 31. Ms. Gurowitz, can you tell
13 me what that's a photograph of?

14 A. It's a photograph of a
15 Shower to Shower product artifact labeled
16 STS042. It's labeled as being from 1969.
17 That corresponds to the listing on the --
18 of the same number on the offsite, the
19 things from offsite storage.

20 Q. And based upon your review
21 of this picture, does this -- does this
22 look like it's an authentic Shower to
23 Shower container?

24 A. As far as I can tell from

1 the picture, it does.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-32.)

5 BY MR. LAPINSKI:

6 Q. I'll hand you a document
7 that's been marked as Exhibit 32.

8 MR. LAPINSKI: I'm going to
9 go off the record for a second.

10 THE VIDEOGRAPHER: The time
11 is 3:48 p.m. We're off the
12 record.

13 (Brief pause.)

14 THE VIDEOGRAPHER: Back on
15 the record at 3:49 p.m.

16 BY MR. LAPINSKI:

17 Q. Ms. Gurowitz, I just handed
18 you what exhibit number?

19 A. 32.

20 Q. That's STS043?

21 A. Yes.

22 Q. Very good. Ms. Gurowitz
23 I've handed you a document that's been
24 marked Exhibit 32. Have you seen this

1 photograph before?

2 A. It's possible. I've seen a
3 lot of the -- the Shower to Shower
4 packaging was more consistent over the
5 years historically, so they all look much
6 more similar than the Johnson's Baby
7 Powder.

8 Q. And this photo -- this
9 photograph is labeled STS043, correct?

10 A. That is correct.

11 Q. And does that photograph
12 correspond with the sample entry that's
13 listed in the sample list?

14 A. It does.

15 Q. And based upon your review
16 of the photograph, is that an authentic
17 Shower to Shower bottle?

18 A. As far as I can tell from
19 the photograph.

20 Q. And do you think that the
21 photograph is an accurate depiction of
22 that particular bottle?

23 MS. FOURNIER: Objection.

24 THE WITNESS: I'm not sure

1 exactly what you mean by that, but
2 as far as I can tell.

3 BY MR. LAPINSKI:

4 Q. The photograph itself, it
5 doesn't look like the photograph has been
6 doctored in any way?

7 A. Not that I can tell.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-33.)

11 BY MR. LAPINSKI:

12 Q. I'm going to hand you a
13 document that's been marked as
14 Exhibit 33. Ms. Gurowitz, this document
15 has a Post-It note on it indicating
16 sample STS046.

17 Do you see that?

18 A. I do.

19 Q. And your review of the
20 picture, does this photograph correspond
21 to the STS046 listed on the sample list?

22 A. Based on the information on
23 both, it appears to correspond.

24 Q. And does the photograph look

1 like it is an authentic Shower to Shower
2 bottle?

3 A. As far as I can tell from
4 the photograph, yes.

5 Q. And is there anything from
6 that photograph that would lead you to
7 believe that is not an accurate picture?

8 A. Not that I could see from
9 the photograph.

10 (Document marked for
11 identification as Exhibit
12 Gurowitz-34.)

13 BY MR. LAPINSKI:

14 Q. I'm going to hand you a
15 document that has been marked as
16 Exhibit 34. Ms. Gurowitz, this document
17 has a Post-It on it indicating sample
18 STS051.

19 Do you see that?

20 A. I do.

21 Q. And your review of the
22 picture, does this photograph correspond
23 to STS051 that is listed on the sample
24 list?

1 A. Based on the information on
2 the photograph, on the sample list it
3 appears to correspond.

4 Q. And based upon your review
5 of the photograph, does this appear to be
6 an authentic Shower to Shower bottle?

7 MS. FOURNIER: I'm just
8 going to -- so I don't have to
9 keep doing it. Object to that
10 question and the one you do after
11 about, does the picture look
12 tampered with. And I do that for
13 all the pictures.

14 MR. LAPINSKI: I changed the
15 tampered with one, so you'll have
16 to.

17 BY MR. LAPINSKI:

18 Q. Is -- okay, based upon your
19 review of the photograph, does this
20 appear to be an authentic Shower to
21 Shower bottle?

22 A. As far as I can tell it
23 appears to be.

24 Q. Is there anything about the

1 photograph that would make you question
2 whether it's an authentic Shower to
3 Shower bottle?

4 A. Not that I can tell from the
5 photograph.

6 Q. And is there anything about
7 the photograph that would lead you to
8 believe that the photograph is not
9 accurate?

10 A. Not that I can tell from
11 this. It's a black-and-white. So as far
12 as I can tell from the photograph.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-35.)

16 BY MR. LAPINSKI:

17 Q. I'm going to hand you a
18 document that's been marked as
19 Exhibit 35. Ms. Gurowitz, this is a
20 photograph with a Post-It note indicating
21 Sample Number STS053.

22 In your review of the
23 photograph, does this photograph
24 correspond with the sample on the sample

1 list STS053?

2 A. Based on the information in
3 the photograph and on the sample list, it
4 appears to correspond.

5 Q. Is there anything about the
6 photograph that would lead you to believe
7 that this is not an authentic Shower to
8 Shower bottle?

9 A. Not that I can tell from a
10 black-and-white photograph of a color
11 bottle, no.

12 Q. And is there anything in the
13 photograph that would lead you to believe
14 that it is not an accurate picture of the
15 bottle?

16 A. Not that I could tell from
17 the photograph.

18 (Document marked for
19 identification as Exhibit
20 Gurowitz-36.)

21 BY MR. LAPINSKI:

22 Q. I'll hand you Exhibit 36.
23 This is a photograph with a Post-It note
24 indicating STS055. Based upon your

1 review of the photograph does this
2 photograph correspond with STS055 that is
3 listed in the offsite storage list?

4 A. Based on what I can see from
5 the photograph, it appears to correspond.

6 Q. Okay. And this particular
7 photograph indicates that it is -- it
8 says "museum" on it.

9 Do you see that?

10 A. No, I don't.

11 Q. On the -- on the front?

12 A. Oh.

13 Q. There's some type of sticker
14 that's on the product itself.

15 A. Yes, I see that.

16 Q. Do you have any
17 understanding as to why that would say
18 museum on it?

19 A. I do not know. It was in
20 offsite storage. So it is possible it is
21 one of those artifacts from the old
22 museum that was sent back to the
23 operating company.

24 Q. And then below that it says

1 19 --

2 A. Although it's after. I'm
3 sorry. It's after the time period.

4 Q. So then you don't have an
5 understanding as to why museum would be
6 written on there as you sit here?

7 A. I don't. So it's -- as the
8 memo we discussed from 1982 referenced
9 the closing of the museum. This is from
10 the year after. So they would have
11 stopped sending samples to that museum
12 entity. So I don't have any information
13 as to why that would say museum.

14 Q. And it also says underneath
15 that, "1983 sealed container," "tamper,"
16 and something is scribbled out.

17 Do you see that?

18 A. I do see that.

19 Q. Do you have an understanding
20 of what that stands for?

21 A. 1938 was about the time
22 consumer products decided to have
23 tamper-evident seals on them. So that
24 was a new thing in society at that time.

1 And that's -- that may be why that was
2 noted.

3 Q. Based upon your review of
4 the picture, do you believe that that's
5 an authentic Shower to Shower bottle?

6 A. As far as I can tell from a
7 black-and-white photograph of a color
8 artifact, yeah.

9 Q. And is there anything that
10 would lead you to believe that it is not
11 an accurate photo?

12 A. Not that I can tell from the
13 photograph.

14 (Document marked for
15 identification as Exhibit
16 Gurowitz-37.)

17 BY MR. LAPINSKI:

18 Q. I'm going to hand you a
19 document that has been marked as Exhibit
20 37. This photograph is labeled STS062.
21 Based upon your review of the photograph,
22 does it correspond with STS062 in the
23 sample list?

24 A. It appears to correspond.

1 Q. Based upon your review of
2 the photograph, do you believe that
3 that's an authentic Shower to Shower
4 bottle?

5 A. As far as I can tell, again,
6 from a black-and-white photograph of a
7 color artifact, yes.

8 Q. And is there anything about
9 that picture that would lead you to
10 believe that it is not an accurate
11 picture?

12 A. Not that I could tell from
13 the picture.

14 (Document marked for
15 identification as Exhibit
16 Gurowitz-38.)

17 BY MR. LAPINSKI:

18 Q. I'm going to hand you
19 Exhibit 38, which is a photograph that
20 looks like it was taken going about
21 60 miles an hour past the Shower to
22 Shower bottle.

23 If you could look at the
24 second page of that, which is, has a

1 Post-It note STS065. And based upon the
2 three photographs that are here, do you
3 believe that this photograph would
4 correspond to the sample that's listed in
5 the sample list as STX -- STS065?

6 A. There is less evidence
7 because the first one is so blurry. So I
8 can't read the number of ounces in the
9 package. That's one of the things that
10 I've been basing it on. And I can't read
11 the number in the first one. But based
12 on the Post-Its on the other two pages,
13 it would appear to correspond as best I
14 can tell without really being able to see
15 the bottles clearly.

16 (Document marked for
17 identification as Exhibit
18 Gurowitz-39.)

19 BY MR. LAPINSKI:

20 Q. I'm going to hand you a
21 document that's been marked as
22 Exhibit 39. And this is a photograph
23 with a Post-It note that indicates
24 JBP-001 and based upon your review of

1 these photographs, does this photograph
2 correspond with the sample list
3 production JP-001?

4 A. As far as I can tell it
5 appears to correspond.

6 Q. Is there anything in that
7 photograph that would lead you to believe
8 that the photograph of JP-001 is not an
9 authentic bottle?

10 A. Not -- again, not that I
11 could tell from a black-and-white
12 photograph of a color artifact.

13 Q. Anything to lead you to
14 believe that that picture is not
15 accurate?

16 A. Not that I could tell from
17 the photograph, the black-and-white
18 photograph.

19 MS. FOURNIER: I'll have the
20 same series of objections about
21 authentic bottle and inaccurate
22 photograph, et cetera, for the
23 Johnson's Baby Powder series.

24 (Document marked for

1 identification as Exhibit

2 Gurowitz-40.)

3 BY MR. LAPINSKI:

4 Q. What did I mark that one as?

5 A. 40.

6 Q. 40?

7 A. 40.

8 Q. Okay. I've handed you a
9 document that has been marked as
10 Exhibit 40. And that indicates with a
11 Post-It note it's a picture of JBP-006.
12 Based upon your review of the photograph
13 does that correspond with JP-006 in the
14 sample list?

15 A. Based upon the information
16 given, it appears to correspond.

17 Q. Based upon your review of
18 the photograph, is there anything that
19 would lead you to believe that is not an
20 authentic J&J bottle?

21 A. Not that I can tell, again,
22 from a black-and-white photograph of a
23 color artifact, it really helps you to
24 see it in color because you know if the

1 branding is a certain color and if for
2 some reason that's not captured in a
3 photograph and the branding was some
4 color that never appeared on a bottle,
5 you could question it. But based on -- I
6 can't tell from the black and white.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-41.)

10 BY MR. LAPINSKI:

11 Q. I'm going to hand you a
12 document that has been marked as
13 Exhibit 41. And these are photographs
14 that are marked as JBP-085. Based upon
15 your review, do the photographs
16 correspond with the sample list JBP-085?

17 A. I -- based on my review it
18 appears to correspond.

19 Q. Does that appear to be a
20 picture of an authentic Johnson's Baby
21 Powder bottle?

22 A. Again, you can't really tell
23 from the black-and-white photograph of a
24 color artifact. It appears to be, but I

1 would really have to see it in color to
2 make an absolute determination.

3 Q. Is there anything that would
4 lead you to believe that is not an
5 accurate picture?

6 A. Not from this, no. But
7 again it helps to see it in color.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-42.)

11 BY MR. LAPINSKI:

12 Q. I'm going to hand you
13 Exhibit 42. Exhibit 42 is photographs of
14 JBP 087. Based upon your review of
15 Exhibit 42, does it appear to be -- does
16 it appear to correspond with the sample
17 list JBP-087 entry?

18 A. It appears to correspond.

19 Q. Anything that would lead you
20 to believe that it's not an authentic
21 Johnson's Baby Powder bottle?

22 A. Not that I could tell from a
23 black-and-white photograph of a color
24 artifact.

1 Q. And would it -- is there
2 anything that would lead you to believe
3 that it's not an accurate picture?

4 A. Not that I could tell from
5 this photograph.

6 (Document marked for
7 identification as Exhibit
8 Gurowitz-43.)

9 BY MR. LAPINSKI:

10 Q. Let me hand you a document
11 that has been marked as Exhibit 43. And
12 the Post-It note here indicates that this
13 is photographs of sample JBP-096. Based
14 upon your review of the photograph do the
15 photographs correspond with the sample
16 listing JBP-096?

17 A. They -- it appears to
18 correspond.

19 Q. And does that appear to be
20 an accurate depiction -- I'm sorry.
21 Strike that.

22 Does that appear to be an
23 authentic J&J bottle?

24 A. As best I can tell from a

1 black and white photograph of a color
2 artifact, it does. But I'd really have
3 to see it in color.

4 Q. Is there anything that would
5 lead you to believe that it is not an
6 accurate picture?

7 A. Well, if you showed me
8 something in color and for some reasons
9 the Johnson's was in orange, I would say
10 I know for a fact that that has never
11 been part of the branding, so I would
12 question it. That's why I've been saying
13 it's hard to say from a black and white.

14 Q. But there's nothing there
15 that leads you to believe that it is
16 inaccurate?

17 A. Not that I could tell from a
18 black-and-white photograph of a color
19 artifact.

20 Document marked for
21 identification as Exhibit
22 Gurowitz-44.)

23 BY MR. LAPINSKI:

24 Q. Exhibit 44. This is --

1 Post-It note indicating this is a
2 photograph of JBP 097. Based upon your
3 review of the photographs, does this
4 correspond with the sample list and the
5 entry for JBP-097?

6 A. Yes, it appears to
7 correspond.

8 Q. Is there anything about the
9 photograph that would lead you to believe
10 that it's not an authentic J&J bottle?

11 A. Again, I cannot tell
12 100 percent from a black and white
13 photograph of a color artifact. But
14 there is nothing that appears in the
15 black and white, but I'd really have to
16 see a color photograph.

17 Q. If you would turn to the
18 fourth page of the photographs of
19 JBP-097. And there is a sticker on there
20 that indicates that it's a Merchandise
21 Notice 6963.

22 Do you see that?

23 A. I do.

24 Q. And what does that refer to?

1 A. So that would refer back to
2 that policy that was in effect from about
3 the '50s to the '70s, that whenever there
4 was a change made to the packaging, or
5 the labeling, that they were to send a
6 sample.

7 And in fact it says on that
8 label, "Delete 'family size' from front
9 label." So that would have been a change
10 to the label that would have caused them
11 to send a sample.

12 Q. So, these pictures depict a
13 sample that was sent to offsite storage
14 by a Johnson & Johnson entity?

15 A. They do. This is among the
16 marketing samples that were found in
17 offsite storage. So at some point they
18 were sent to offsite storage.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-45.)

22 BY MR. LAPINSKI:

23 Q. I'll hand you a document
24 that's been marked as Exhibit 45.

1 Post-It note indicates this is sample
2 JBP-099. Based upon your review, do
3 these photographs comport with the sample
4 list entry for JBP-099?

5 A. Based on my review it
6 appears to correspond.

7 Q. On the fourth page, there is
8 a photograph and it has a label on the
9 bottle itself. Do you have -- can you
10 give me an indication of what that label
11 refers to?

12 A. Sure. Again the top says --
13 I'm assuming MD -- the part is cut-off.
14 It goes around the bottle. That would
15 correspond to a merchandising notice. So
16 something about the package was changed,
17 whether it was the label or the size or
18 the shape. And therefore, they -- as per
19 that policy that was in effect for a few
20 decades, they would have sent a sample.

21 Q. So this is a sample that
22 would have been -- would have been sent
23 by J&J Consumer to the museum?

24 A. To the old J&J museum.

1 Q. And then eventually moved to
2 offsite storage?

3 A. Yes. At some point.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-46.)

7 BY MR. LAPINSKI:

8 Q. I'm going to hand you
9 Exhibit 46. Post-It note indicates that
10 Exhibit 46, pictures of sample JBP 107.
11 Based upon your review of the
12 photographs, does this comport with the
13 listing on the sample list for JBP 107?

14 A. It sort of appears to. But
15 the sample -- the JBP 107 on the sample
16 list has a date of 1973. But the actual
17 photograph of the artifact has three
18 dates. 1973, 1974, and one where I can't
19 see because the date is cut off. 1975.

20 So on this one I couldn't
21 say exactly, because the dates are so
22 different. The one on the sample list
23 does not list three dates. It only lists
24 one date.

1 Q. And the dates that you're
2 referring to are on the third page of the
3 photographs?

4 A. Correct.

5 Q. Okay. And --

6 A. The second and third.

7 Q. Or the third and fourth?

8 A. Or the -- that too.

9 Q. The -- and those dates that
10 you're referring to, what do those labels
11 for those particular dates refer to?

12 A. So, again, it has that
13 merchandise notice number up top. So
14 there would have been some sort of change
15 to either the label or the package shape
16 or size. And if you look at Page three,
17 the bottom label says something -- I
18 can't make on you the first word.
19 Something spaced lettering. So that
20 looks like that would have been a label
21 change.

22 Q. And this is a bottle that
23 would have been produced to the J&J
24 museum pursuant to the policies that were

1 in place at that time?

2 A. At the old museum, yes. It
3 would have been -- it falls in that time
4 frame.

5 (Document marked for
6 identification as Exhibit
7 Gurowitz-47.)

8 BY MR. LAPINSKI:

9 Q. Exhibit 47. Do the
10 photographs in Image 47 correspond to
11 sample JBP-119 on the sample list?

12 A. Yes, it appears to
13 correspond.

14 Q. And on the fourth page,
15 there's a label on the packaging on the
16 fourth page. What's your understanding
17 of that labeling?

18 A. It says -- are you referring
19 to the one that says, "New good sheet,
20 Number 5928?"

21 Q. Yes.

22 A. That again, would have been
23 in relation to a packaging change and as
24 noted, if you look -- it says new

1 plastic, it's from 1963. That is the
2 first year that the product was in a
3 plastic container as opposed a metal
4 container. So that would have been most
5 likely a packaging change.

6 Q. And this would have been a
7 sample that would have been sent to the
8 museum pursuant to the written policy
9 that was in place at that time?

10 A. As best I can tell from
11 this, yes.

12 (Document marked for
13 identification as Exhibit
14 Gurowitz-48.)

15 BY MR. LAPINSKI:

16 Q. I'm going to hand you what's
17 been marked as Exhibit 48. And these
18 photographs correspond to the entries on
19 the sample list for JBP-133?

20 A. Perhaps. The reason I say
21 perhaps is there is a label. And I can't
22 tell. On Page 3 and 4, the label goes
23 over two sides of the container, so it's
24 hard to say.

1 On Page 3 it says Leahy "box
2 number." And then on Page 4, there's a
3 61. So I don't know if it refers to Box
4 Number 61 or the year 1961.

5 If it refers to a year, then
6 they don't correspond because on the list
7 JBP-133 is listed as being from 1960.

8 (Document marked for
9 identification as Exhibit
10 Gurowitz-49.)

11 BY MR. LAPINSKI:

12 Q. I'll hand you Exhibit 49.
13 These are photographs of JBP-135. Based
14 upon your review of the photographs do
15 these images correspond with the product
16 that's listed as JBP-135 on the sample
17 list?

18 A. I can't tell. There is a
19 handwritten label taped onto it that has
20 a date of 1963. But if you look at Page
21 2, the photo on Page 2, it looks like it
22 says -- there's a label toward the
23 bottom. It says, "Filed 11/8/54."

24 Q. And below that writing it

1 says, "Reg number 74,097." Do you have
2 any idea what that indicates?

3 A. I can take an educated guess
4 that it relates to the big label,
5 handwritten label that's taped that says
6 "Trademark application." Potentially
7 that could be a registration number from
8 that. But without more information I
9 couldn't say 100 percent sure.

10 Q. Is it possible that that
11 represents a trademark application that
12 was filed in November of 1954?

13 A. It's possible. But it's got
14 two dates. 1963 and 1964. So that to me
15 would raise an issue right there.

16 Q. And I'm sorry. Where are
17 the two dates that you're referring to?

18 A. So there's a bigger
19 handwritten label that says -- on Page 3
20 it says, "U.S. trade sample." And then
21 on Page 4 it says, "Trademark
22 application." That's got the one -- it's
23 got a date, the month is obscured. It
24 might be a one. It may not. Something,

1 17/63.

2 And then on Page 2, it says,
3 "Filed 11/8/54."

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-50.)

7 BY MR. LAPINSKI:

8 Q. I'm handing you a document
9 that has been marked Exhibit 50. And
10 these are photographs relating to sample
11 JBP 165.

12 Based upon your review of
13 the photographs, do the photographs
14 correspond with the sample list entry JBP
15 165?

16 A. As far as I can determine
17 from the information on the photograph
18 and on the list, it appears to
19 correspond.

20 Q. And on Page 3 of the
21 photographs, there are change labels that
22 are depicted here, correct?

23 A. That is correct.

24 Q. And there are three

1 different change labels. One is Number
2 6715, the other is 7231, and the last one
3 is 7344, correct?

4 A. That is correct.

5 Q. And are they change labels
6 that would represent changes to the
7 labeling of the bottle?

8 A. Changes to something on the
9 bottle. Either the labeling -- something
10 to do with the labeling or the shape or
11 size of the package.

12 Q. And would these samples have
13 been produced to the J&J museum based
14 upon the written protocol that was in
15 place at the time?

16 A. They fall in that time
17 frame. So presumably they would have.

18 (Document marked for
19 identification as Exhibit
20 Gurowitz-51.)

21 BY MR. LAPINSKI:

22 Q. I'm going to hand to you a
23 document that has been marked Exhibit 51.

24 And these relate to JBP-166.

1 Based upon your review of the
2 photographs, do these photographs comport
3 with the sample list entry JBP-166?

4 A. Based upon the information
5 it appears to comport. Although the big
6 listing of stuff does not reference that.
7 It has a sample of baby lotion attached
8 to it.

9 Q. I'm sorry. Could you just
10 repeat what you said?

11 A. Sure. They appear to
12 comport. Although the listing for Number
13 166 on the list of offsite storage
14 samples does not mention that it has a
15 sample of baby lotion attached to it.

16 Q. So other -- other than the
17 absence of the reference to baby lotion,
18 do you believe that they comport?

19 A. It appears to.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-52.)

23 BY MR. LAPINSKI:

24 Q. I'm going to hand you

1 Exhibit 52. These are photos of sample
2 JBP-167. Based upon your review of the
3 photos, do these comport with the entry
4 for JBP-167 on the sample list?

5 A. It appears to, yes.

6 Q. Anything that would lead you
7 to believe that these are not accurate
8 photos of JBP 167?

9 A. Not that I can tell from the
10 photograph.

11 Q. And in 1960 J&J was still
12 using metal cans; is that correct?

13 A. That's -- in the U.S.,
14 that's correct, yes.

15 Q. Anything about the
16 photograph that would lead you to believe
17 that it's not an authentic J&J container?

18 A. I cannot tell from a black
19 and white photograph of a color artifact.
20 I'd really need to see it in color to
21 make that 100 percent determination.

22 (Document marked for
23 identification as Exhibit
24 Gurowitz-53.)

1 BY MR. LAPINSKI:

2 Q. I'm going to hand you
3 Exhibit 53. And these are photographs of
4 sample JBP 169. Based upon your review
5 of the photographs, do you believe these
6 photographs relate to the sample list JBP
7 169?

8 A. Based on the photographs and
9 the information on the sample list, it
10 appears to.

11 Q. And on the fourth page of
12 the document, there is a label reflecting
13 J -- the picture has -- strike that.

14 On the fourth page, the
15 bottle has a label on it indicating that
16 there was a change to the product,
17 correct?

18 A. The bottle has a product
19 change label indicating that there was
20 some sort of change to something.

21 Q. And do you know who the --
22 may have signed -- may have signed this
23 D-E-T-T-R-E?

24 A. I do not. 1966 is beyond

1 the institutional memory of any employee
2 currently at Johnson & Johnson.

3 Q. How about B&PD that says
4 next -- that's next to the name. Do you
5 know what that refers to?

6 A. I do not.

7 Q. Is this a sample that would
8 have been produced to the Johnson &
9 Johnson museum pursuant to the written
10 protocol that was in place at the time?

11 A. It is in that time frame,
12 and it has a product change number. So
13 likely it would -- it falls within that
14 time frame.

15 (Document marked for
16 identification as Exhibit
17 Gurowitz-54.)

18 BY MR. LAPINSKI:

19 Q. This is Exhibit 54. These
20 are photographs of JBP-175. Based upon
21 your review of the photos, do these
22 photos align with JBP-175 that is listed
23 on the sample list?

24 A. Based upon the photos and

1 the information, it does appear to align.

2 Q. And on the fourth page there
3 is a label referencing the change that
4 was made to the bottle; is that correct?

5 A. That is correct.

6 Q. And that was in 1972?

7 A. That is correct.

8 Q. And this sample would have
9 been produced to the J&J museum pursuant
10 to the policies that were in place at the
11 time?

12 A. It is during the time frame
13 that those policies were in place, so
14 likely it would have been.

15 Q. And the -- next to the label
16 reflecting the change there's a second
17 label that says SE-116. Do you see that?

18 A. I do.

19 Q. Do you know what that refers
20 to?

21 A. I believe that's a five,
22 actually, 5E-116. That refers to
23 something that was labeled -- I've seen
24 papers and on those transfer sheets

1 Drawer 5E.

2 Apparently that all of the
3 baby -- Johnson's Baby Powder artifacts
4 that were sent from the old Kilmer Museum
5 back to the operating company, they are
6 listed as being from Drawer 5E. Based on
7 the volume of those samples, I don't
8 think that there could physically exist a
9 drawer that big. So it had to refer to
10 some sort of unknown filing system.

11 Q. The 5E refers to a museum
12 filing system?

13 A. Some sort of filing system
14 that was used in the old law department
15 Kilmer Museum. Maybe more like a Dewey
16 decimal system like in a library, because
17 based on the amount of -- if you look at
18 how many things are labeled marketed, I
19 don't think you can physically construct
20 a drawer that big.

21 Q. Okay. Is it your
22 understanding that -- excuse me. Is it
23 your understanding that all of the
24 marketing samples that are listed in the

1 offsite storage list had a 5E designation
2 to them?

3 A. I don't know that every
4 single one of them did. But there were
5 things on the transfer sheets where it
6 said Drawer 5E and it had Johnson's Baby
7 Powder.

8 Q. And the transfer sheets that
9 you're referring to are the transfer
10 sheets of the -- well, strike that.

11 Which transfer sheets are
12 you referring to?

13 A. I'm referring to the 1982
14 transfer sheets to Leahy Business
15 Archives.

16 MR. LAPINSKI: I'm going to
17 go off the record for a minute. I
18 need two minutes.

19 THE VIDEOGRAPHER: The time
20 is 4:28 p.m. We are off the
21 record.

22 (Short break.)

23 THE VIDEOGRAPHER: We are
24 back on the record at 4:42 p.m.

1 (Document marked for
2 identification as Exhibit
3 Gurowitz-55.)

4 BY MR. LAPINSKI:

5 Q. Ms. Gurowitz, I'm going to
6 hand you a document that's been marked as
7 Exhibit 55.

8 I'm going to try to get you
9 one that doesn't have highlighting on it.

10 These photos indicate that
11 these are pictures of sample JBP 177.
12 Your review of the photographs, do these
13 photos correspond with the sample list
14 entry of JBP 177?

15 A. Yes, they appear to
16 correspond.

17 Q. And on the last page, if you
18 would look, there is a -- excuse me. A
19 change label on the bottle in the last
20 image, correct?

21 A. Correct.

22 Q. And that change label would
23 relate to the policy that was in place at
24 the time they produced this to the J&J

1 museum?

2 A. Yes, the date of 1966 is
3 within that time frame.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-56.)

7 BY MR. LAPINSKI:

8 Q. I'm going to hand you a
9 document that has been labeled as
10 Exhibit 56. And this indicates that it
11 is a sample associated -- it is photos
12 associated with sample JBP-183. If you
13 would review the photographs. Do these
14 photographs correspond with the sample
15 list entry of JBP-183?

16 A. Yes, it appears to
17 correspond.

18 Q. And on the fourth page, the
19 last photograph, there is a product
20 change label attached to the bottle,
21 correct?

22 A. That is correct.

23 Q. And would this bottle have
24 been produced pursuant to the written

1 policy that was in place at the time?

2 A. It was in that time frame.

3 So I think we could assume that it was.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-57.)

7 BY MR. LAPINSKI:

8 Q. Next exhibit is Exhibit 57.

9 And these are photographs of JBP-190.

10 And if you would review the photographs.

11 Based upon your review of the

12 photographs, do these samples -- these

13 photos correspond with the entry on the

14 sample list of JBP 190?

15 A. As best I could tell, they
16 can. Some of the photographs are blurry
17 so I cannot make out some of the
18 information.

19 Q. On the last photograph,
20 there is a sticker with the indication of
21 5E-154. Is that an indication that this
22 bottle would have been transferred from
23 the J&J museum at one point in time?

24 A. That is an indication. It

1 refers to whatever was meant by Drawer
2 5E. So since that was on that transfer
3 information, it would be a fairly strong
4 indicator that this likely is one of
5 those.

6 Q. And while the image is
7 blurry on the second page, there's an
8 image of a product change label, correct?

9 A. That is correct.

10 Q. And that's dated 1967?

11 A. I can't make out the date on
12 that. It's too blurry to see.

13 Q. Is that the label the type
14 of label that you would normally see on a
15 product that was sent to the J&J museum
16 after a label change?

17 A. That -- it looks like one of
18 those kind of change labels.

19 Q. And that would have been
20 sent pursuant to the policy that was in
21 place at J&J at the time?

22 A. If this is from 1967 that
23 falls within that time frame.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-58.)

3 BY MR. LAPINSKI:

4 Q. Next exhibit is Exhibit 58.
5 This is photographs of JBP-215. Based
6 upon your review of these photographs do
7 these photographs correlate with the
8 sample list entry JBP-215?

9 A. Yes, it appears to
10 correlate.

11 Q. And on the last page there
12 is a sticker with the designation 5E-146.
13 As we've discussed, would that relate to
14 transfer of this product from the J&J
15 museum?

16 A. It related to whatever
17 filing system the old museum used at that
18 time.

19 Q. And at the same page, the
20 top portion of the bottle has a label on
21 it, a sticker on it. It says 44-133.

22 Do you see that?

23 A. I do see that.

24 Q. Do you know what that would

1 refer to?

2 A. I do not.

3 Document marked for
4 identification as Exhibit
5 Gurowitz-59.)

6 BY MR. LAPINSKI:

7 Q. I'll hand you Exhibit 59.
8 This is for sample JBP-232. And if you
9 would review those pictures. Do the
10 photographs relate to the entry on the
11 sample list for JBP 232?

12 A. As best I can tell, I don't
13 see anything on the photograph of the
14 actual artifact that references container
15 volume or a year. So I cannot say for
16 100 percent certain.

17 Q. Has it been a common
18 practice for J&J to have container volume
19 and product year on their bottles?

20 A. No, not necessarily.
21 Container volume certainly, but year, not
22 necessarily.

23 Q. So it's not -- it's not
24 uncommon for a J&J -- a Johnson's Baby

1 Powder product to not have a year
2 designated on it?

3 A. That's correct. Some of --
4 some of the historical artifacts had been
5 labeled at some point in their past with
6 a stick-on label with a year, which is
7 helpful in helping identify when they
8 might be from.

9 Q. And the last page of this
10 photograph has a sticker on it with the
11 designation 5E-102, correct?

12 A. That is correct.

13 Q. And that is a designation
14 for the Johnson & Johnson museum filing
15 system?

16 A. That is a designation for
17 the old filing system in the old
18 Johnson & Johnson museum.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-60.)

22 BY MR. LAPINSKI:

23 Q. This is Exhibit 60. And
24 Exhibit 60 relates to sample JBP-237?

1 A. Yes. It appears to
2 correspond.

3 Q. And the second page has
4 designation 5E-149 relating to the old
5 museum filing system, correct?

6 A. Yes. It does refer to that
7 old filing system.

8 Q. And above that there's a
9 sticker with a designation, excuse me,
10 45-133. Do you know what that refers to?

11 A. I do not. We don't have any
12 information about what that would refer
13 to.

14 (Document marked for
15 identification as Exhibit
16 Gurowitz-61.)

17 BY MR. LAPINSKI:

18 Q. I'm going to hand you
19 Exhibit 61. Exhibit 61 relates to sample
20 JBP-294. Based upon your review of the
21 photographs, are these do these
22 photographs correspond with entry JBP-294
23 in the sample list?

24 A. JBP-294, no, they do not.

1 There are more than one, so actually I'm
2 just paging through it. On the sample
3 list, JBP-294 is listed as Johnson's Baby
4 Powder from 1984 for two 9-ounce bottles
5 in a cardboard box. That corresponds
6 with the photographs on Page 4 and
7 subsequent, but there is also on the
8 first three pages, there is a photograph
9 of a round container that's also listed
10 as JBP 294. This round container does
11 not correspond with that. It is not from
12 1984.

13 Q. So if we can, let's break
14 this down a little bit. The second half
15 of the exhibit that's been marked as
16 Exhibit 61 where there is -- beginning
17 with the photograph that has two 9-ounce
18 bottles of the Johnson's Baby Powder,
19 based upon your review of the -- of those
20 five total photos of the dual pack, we'll
21 call it, do those photos relate to the
22 sample entry JBP-294 on the sample list?

23 A. The photos of the two-pack
24 of Johnson's Baby Powder in the plastic

1 containers do appear to relate to JBP-294
2 on the sample list.

3 Q. And just to -- just to
4 confirm, if you could go through the
5 photos that are after the front image of
6 JBP 294 and just confirm that those
7 photos, to your knowledge, relate to the
8 double pack?

9 A. To my knowledge those photos
10 appear to relate to the double pack.

11 Q. And the second-to-last photo
12 has a change sticker on it, correct?

13 A. It does. But this one is
14 from 1984. This is after the date of
15 1982 that references when the old Kilmer
16 Museum, the Johnson & Johnson museum was
17 closed. And samples were no longer being
18 sent there.

19 So clearly this was
20 preserved somewhere and sent to offsite
21 storage. This was actually a -- it's
22 294. This was in quality assurance.
23 This is not part of things that were sent
24 from the old Johnson & Johnson museum.

1 Q. So this is -- this is a
2 sample that was maintained by the quality
3 assurance department?

4 A. This -- when I spoke to --
5 I'm sorry, just going to -- Mark Zappa in
6 quality, he checked around and he said
7 that it was not the policy or practice of
8 quality assurance to send samples to
9 offsite storage. So these had been
10 packed up in boxes with other stuff that
11 were labeled quality assurance and sent
12 to offsite storage.

13 So we don't know necessarily
14 how or who put them in those boxes or why
15 they were sent to offsite storage, but
16 they were among the things labeled
17 quality assurance. Clearly this is a
18 merchandising notice. But this postdates
19 anytime where it would have been sent to
20 the museum in New Brunswick.

21 Q. But the merchandising note
22 that's on it is a merchandising notice
23 that would typically be affixed to a
24 product by a J&J department?

1 A. It would have been, as I
2 mentioned, in the 1980s Johnson & Johnson
3 was a decentralized organization. So the
4 individual operating units had their --
5 had their own ways of doing things.

6 So clearly this indicates
7 that somebody in the consumer operating
8 unit was still sending out merchandising
9 notices. But they were not -- the
10 samples were not being preserved in New
11 Brunswick, because that museum had been
12 disbanded for those purposes by that
13 time.

14 Q. And as a separate operating
15 unit, you're referring to Johnson &
16 Johnson Consumer, Inc.?

17 A. Correct.

18 Q. If we can go to the first
19 three pages of that exhibit?

20 A. Sure.

21 Q. Based upon your review of
22 the first three pages of the exhibit, do
23 you have an understanding as to the year
24 of the Johnson's Baby Powder product

1 that's represented there?

2 A. Yes, I do. If you'll note
3 that it is a cylindrical container. And
4 if you look at Page 2, the picture on
5 Page 2. At the very bottom of the back,
6 it says, "Wartime container," so that
7 would have been circa 1942 during World
8 War II.

9 Metal was needed by the
10 United States for the war effort, so
11 Johnson & Johnson switched the containers
12 of Johnson's Baby Powder to a round
13 cardboard container at that time.

14 Q. So based upon your review of
15 the picture this is a round cardboard
16 container that's depicted?

17 A. It appears to be. It's hard
18 to tell on the picture on the first page,
19 but if you look at the back it says,
20 "Wartime container," which clearly
21 references World War II.

22 MS. FOURNIER: Can you give
23 us a copy?

24 BY MR. LAPINSKI:

1 Q. That was Exhibit 61?

2 A. Correct.

3 (Document marked for
4 identification as Exhibit
5 Gurowitz-62.)

6 BY MR. LAPINSKI:

7 Q. This is Exhibit 62. And
8 these are photos of JBP 295. And based
9 upon your review of these photographs, do
10 the photos correspond with the sample
11 list entry JBP 295?

12 A. Based upon the photograph,
13 they appear to correspond with that
14 sample entry.

15 MR. LAPINSKI: Do you want
16 to go off the record for a minute?

17 MS. FOURNIER: Yes.

18 THE VIDEOGRAPHER: The time
19 is 4:58 p.m. We are off the
20 record.

21 (Brief pause.)

22 THE VIDEOGRAPHER: Back on
23 record at 5:00 p.m.

24 BY MR. LAPINSKI:

1 Q. Ms. Gurowitz, you have in
2 front of you Exhibit 62. And I believe
3 you had already testified that this does
4 appear to correspond with the sample list
5 entry JBP 295, correct?

6 A. As best as I can tell. It
7 appears to. In the -- in the column that
8 says, "Approximate contents of container,
9 one bottle only." These are clearly two
10 packs. So I'm not sure what that
11 reference is.

12 Q. The container -- going to
13 the sample list, just to confirm. The
14 container volume does say two 9-ounce
15 bottles in cardboard box, correct?

16 A. Yes, it does.

17 Q. Okay. And on the fourth
18 page there is again one of the
19 merchandising label change stickers,
20 correct?

21 A. That is correct.

22 (Document marked for
23 identification as Exhibit
24 Gurowitz-63.)

1 BY MR. LAPINSKI:

2 Q. We're switching back now no
3 Shower to Shower.

4 A. That means I have to re-find
5 that.

6 Q. We're going to be starting
7 with the beginning of the Shower to
8 Shower. So it's actually going to be --

9 A. I can't get used to the
10 double-sided.

11 Q. Page ID 11884.

12 A. 1884. Okay.

13 Q. Now, the page that you're
14 looking at, you're looking at the top of
15 the page. Are you starting there with
16 STS003?

17 A. The top of Page 11884 --

18 Q. You have the --

19 A. -- on mine has JBP-288.

20 Q. Okay. We're on the same
21 page.

22 This is Exhibit 63. And
23 this is indicated to be photographs of
24 STS001. Based upon your review of the

1 photographs, do these photographs
2 correspond to the sample list entry
3 STS001?

4 A. It appears to correspond,
5 yes.

6 Q. Okay. On the second page,
7 there is a sticker that says, "1982,
8 55M-645."

9 Do you know what that refers
10 to?

11 A. 1982, obviously would refer
12 to the year. 55M-645 was some sort of
13 identifying number.

14 Q. And do you know the purpose
15 of that identifying number?

16 A. I do not.

17 Q. Would that have been a
18 practice within J&J to affix that
19 identifying number to some type of a
20 sample product?

21 A. The samples, the ones with
22 the marketing notices had a much longer
23 number. And it would say merchandise
24 notice with a multi-digit number. So

1 this looks like it was not relating maybe
2 to a marketing notice but some other type
3 of filing system.

4 Again, this is from 1982,
5 which was the year that the old museum
6 was closed. So I don't know whether this
7 would have been sent to that museum
8 before the closing was done or if it was
9 after. It's possible it never was sent
10 to New Brunswick.

11 Q. If it wasn't sent to New
12 Brunswick, then it would have been
13 maintained at J&J consumer Inc.?

14 A. Potentially. This is -- it
15 is labeled -- it was in the box with the
16 marketing materials according to the
17 list.

18 Q. And are you able to -- are
19 you able to ascertain the year on the
20 bottle, other than the date that written
21 on the sticker based upon the
22 photographs?

23 A. Based upon the photographs I
24 am not able to do that.

1 (Document marked for
2 identification as Exhibit
3 Gurowitz-64.)

4 BY MR. LAPINSKI:

5 Q. This is Exhibit 64,
6 photographs of STS002.

7 Based upon your review, do
8 these photographs -- are these
9 photographs correspond to STS002 in the
10 sample list?

11 A. It appears to correspond.

12 Q. And on the second page of
13 the photographs, there is a marketing
14 label change sticker, correct?

15 A. That is correct.

16 Q. And this is a sample that
17 normally would have been produced to the
18 museum pursuant to the policy that was in
19 place at that time?

20 A. It's dated 1980. So it is
21 two years before the memo saying it was
22 going to close. So it's possible that it
23 was.

24 Q. Is there anything that would

1 lead you to believe that it was not
2 produced pursuant to the policies that
3 were in place at that time?

4 A. I don't have enough
5 information to make that determination.

6 Q. There's nothing that would
7 indicate that it was not produced
8 pursuant to that policy, correct?

9 A. Again, there's not enough
10 information either way. One can assume
11 based on that sticker and the date on it.

12 (Document marked for
13 identification as Exhibit
14 Gurowitz-65.)

15 BY MR. LAPINSKI:

16 Q. I'm going to hand to you a
17 document that's been marked as Exhibit
18 65. This is photographs of STS003.
19 Based upon your review of the
20 photographs, do these photos correspond
21 with the listing in the sample list of
22 STS003?

23 A. It appears to correspond,
24 yes.

1 Q. And this particular product
2 has a couple different stickers on it.
3 On the front page there is a sticker with
4 the number 707A. Do you know what that
5 refers to?

6 A. I do not.

7 Q. And there is also a sticker
8 indicated property of PPC museum,
9 correct?

10 A. Correct.

11 Q. And as we discussed before,
12 what does PPC stand for?

13 A. PPC stands for Personal
14 Products Corporation. It is a
15 no-longer-existing historical subsidiary
16 of Johnson & Johnson.

17 Q. And then on the second page
18 there is a merchandising notice change
19 label, correct?

20 A. That is correct.

21 Q. And I can't make out the
22 date on that label change. But do you
23 know what the approximate date of this
24 product is?

1 A. On the -- on the list it
2 says -- it says 1969.

3 The date is blurry. It
4 looks like 11/6, and the year is too
5 blurry to make out.

6 Q. If this were a product from
7 1969, this would have been produced to
8 the museum pursuant to the policies that
9 were in place at that time?

10 A. It falls in those time
11 parameters, yes. I do note that in the
12 column, approximate contents of
13 container, this one is not full. So
14 somehow in whatever journey it took to
15 get wherever it went, it ended up as
16 three-quarters full instead of full.

17 So again, since we cannot
18 put together an end-to-end chain of
19 custody for one of these historic
20 artifacts, appears from about 1969, we
21 don't know how, when, or why it ended up
22 with some contents missing.

23 Q. And as far as chain of
24 custody is concerned, there is nothing in

1 the photograph or on the bottle itself
2 that would lead you to believe that at
3 any time the bottle was out of the
4 custody of Johnson & Johnson?

5 A. We don't know. At some
6 point it was clearly opened because there
7 are contents missing. So we have no way
8 to determine whether it was -- no way to
9 determine what the full chain of custody
10 is. There's just not enough historical
11 information.

12 Q. Well, even if the bottle was
13 sealed and full, there's no indication
14 that it was ever outside of the custody
15 of Johnson & Johnson, correct?

16 A. Well, the bottle wasn't
17 sealed. Safety seals on consumer
18 packaging was not a thing until the
19 1980s. So a bottle from 1969 would never
20 have been sealed.

21 And we don't know. We do
22 know that this is noted as being
23 three-quarters full. So clearly at some
24 point contents were removed. We don't

1 know how or by who or for what purpose.
2 And so that is just part of not being
3 able to trace an end-to-end chain of
4 custody for this artifact.

5 (Document marked for
6 identification as Exhibit
7 Gurowitz-66.)

8 BY MR. LAPINSKI:

9 Q. I'll hand you Exhibit 66.
10 These are photographs of
11 STS004. Based upon your review of the
12 photographs, does this bottle correspond
13 to the entry in the sample list for
14 STS004?

15 A. As best as I can tell, it
16 does. One of the things that I've been
17 looking at is not just the number on the
18 Post-It. But the volume listed on the
19 package. And this has stickers on it, so
20 I cannot see if there is a volume listed.
21 So I'm basing that on the number, because
22 I also don't see a date -- oh, yeah.
23 There's a '68 date on here, so that also
24 corresponds.

1 Q. And where is the '68 date
2 that you're looking at?

3 A. On the second page, the
4 photograph of the back, there's a
5 merchandising notice label. And you can
6 just make that out at the top of that
7 label.

8 Q. So it's the 3/20/68 date
9 that you're referring to on the
10 merchandising label?

11 A. Yes.

12 Q. Okay. And that
13 merchandising notice label is the label
14 that would be affixed to the product when
15 it was sent to the museum pursuant to the
16 policy in place, correct?

17 A. Sent to -- well, it was --
18 it would have been, but it also says
19 property of PPC, Milltown, New Jersey.
20 It was sent to either the old law
21 department Kilmer museum or the PPC
22 museum. I don't have enough information
23 to determine which one.

24 Q. Both of those facilities are

1 Johnson & Johnson facilities, correct?

2 A. The Kilmer Museum is
3 definitely a Johnson & Johnson facility.
4 I don't have enough information about the
5 PPC museum or what it was to make that
6 determination. It does say it was in
7 Milltown, New Jersey, and the
8 headquarters of Personal Products was in
9 Milltown. So that's as far as a
10 determination I could make.

11 Q. Personal products was a J&J
12 company, correct?

13 A. It's a historical,
14 no-longer-existing company.

15 Q. It was a J&J company in
16 March of 1968 correct?

17 A. I would have to research
18 that to confirm that. I couldn't tell
19 you. I mean, I don't know when that
20 sticker from -- it's a historical
21 company. I would have to look through
22 records to determine whether that was
23 around in '68.

24 (Document marked for

1 identification as Exhibit
2 Gurowitz-67.)

3 BY MR. LAPINSKI:

4 Q. Exhibit 67. This is for
5 STS005. Based upon your review of these
6 photographs, do the photographs
7 correspond with the sample list entry for
8 STS005?

9 A. Yes, they appear to
10 correspond.

11 Q. And on the back there is a
12 sticker. It says 1982, and below that it
13 says 55M-644. Do you have any
14 understanding as to what that refers to?

15 A. I do not. I would assume
16 1982 would be the date though.

17 (Document marked for
18 identification as Exhibit
19 Gurowitz-68.)

20 BY MR. LAPINSKI:

21 Q. This is Exhibit 68. This is
22 STS011. And in your review of the
23 photographs, do these photos correspond
24 to the sample list entry STS011?

1 A. They appear to correspond,
2 yes.

3 Q. And there is a sticker on
4 the first page that says, "New STS Spice
5 with baking soda" -- "baking
6 soda/cornstarch," correct?

7 A. Correct.

8 Q. And do you know what that's
9 a reference to?

10 A. Obviously -- so potentially
11 a label change because it's noted on the
12 label. However, this one is from 1985,
13 this is after the old museum closed. So
14 this would not have been sent to that
15 museum in New Brunswick.

16 Q. And are you aware whether it
17 continued to be a practice after 1982
18 when the museum closed for Johnson &
19 Johnson Consumer to retain product
20 samples after there was a change to the
21 label?

22 MS. FOURNIER: Objection.

23 Outside the scope.

24 THE WITNESS: There is no

1 information that we have regarding
2 the policy of a no-longer-existing
3 operating unit.

4 BY MR. LAPINSKI:

5 Q. In 1980 -- in 1985, who was
6 the manufacturer of Shower to Shower?

7 A. If you look at the second --
8 the photograph of the back, it says
9 Personal Products Company, Milltown, New
10 Jersey.

11 Q. And do you know when
12 Personal Products Company went out of
13 existence?

14 A. I would have to look that
15 up.

16 (Document marked for
17 identification as Exhibit
18 Gurowitz-69.)

19 BY MR. LAPINSKI:

20 Q. This is Exhibit 69. And
21 these photos pertain to STS012. Based
22 upon your review of the photos, do the
23 photos correspond to sample list entry
24 STS012?

1 A. They appear to correspond.

2 Q. And on the second page there
3 is a promotional bulletin from November
4 of 1980, correct?

5 A. That is correct.

6 Q. And that would be during the
7 period of time that there was a policy in
8 place for samples to be sent from the
9 Johnson & Johnson unit to the Johnson &
10 Johnson museum?

11 A. That would fall before 1982,
12 so presumably, yes.

13 (Document marked for
14 identification as Exhibit
15 Gurowitz-70.)

16 BY MR. LAPINSKI:

17 Q. Exhibit 70. These
18 correspond to STS013. And if you would
19 review the photographs, do the
20 photographs depict what is in the sample
21 list entry STS013?

22 A. They appear to do so, yes.

23 Q. And on the second page there
24 is a merchandise notice from September of

1 1976, correct?

2 A. That is correct.

3 Q. And that notice and this
4 product would fall within the time period
5 where there was a policy for sample
6 products with label changes to be sent to
7 the J&J museum, correct?

8 A. They would. But on the
9 photograph of the front of this, it says
10 property of PPC museum Milltown, New
11 Jersey. So we don't have any information
12 on whether this was sent to New Brunswick
13 or sent to whatever the PPC museum in
14 Milltown was.

15 Q. The PPC museum was a
16 Johnson & Johnson-owned company, correct?

17 A. Personal Products was a
18 Johnson & Johnson affiliate --
19 subsidiary, affiliate.

20 Q. Personal Products Company
21 was an affiliate of Johnson & Johnson,
22 correct?

23 A. Yes.

24 Q. And is it your understanding

1 that the PPC museum was part of Personal
2 Products?

3 A. There is no one at Johnson &
4 Johnson currently who dates back that far
5 regarding employment, so nobody knows.

6 It was obviously in Milltown
7 where personal products was
8 headquartered. That's about as far as we
9 can go without having any more
10 information.

11 Q. Is there anything that would
12 lead you to believe that the product
13 depicted in Exhibit 70 for STS013 was not
14 at the personal products organization in
15 Milltown?

16 A. There's just not enough
17 historical information existing. This
18 one interestingly is also noted as being
19 half full. So sometime during its
20 existence it was opened and half the
21 contents are no longer there.

22 So we don't know, again,
23 when that happened. That's just part of
24 not being able to recreate an entire sort

1 of chain of where this was at every
2 moment in its history.

3 Q. Well, do you have any
4 evidence that would indicate that there
5 was any point in time where this sample
6 bottle was not in the custody of
7 Johnson & Johnson or a Johnson & Johnson
8 subsidiary?

9 A. We do not have enough
10 information to make that determination.

11 (Document marked for
12 identification as Exhibit
13 Gurowitz-71.)

14 BY MR. LAPINSKI:

15 Q. I'll hand you Exhibit 71.
16 These are photographs related to STS016.
17 And if you look at these photographs, do
18 these photographs correspond to the
19 sample list entry STS016?

20 A. Yes, they do appear to
21 correspond.

22 Q. And on the second -- second
23 page, there is a promotional bulletin
24 notice reflecting a change, correct?

1 A. That is correct.

2 Q. And that's from 11/7/1980,
3 which is during the period of time that
4 Johnson & Johnson had a policy in place
5 for label changes to be produced to the
6 museum?

7 A. That is correct. This one
8 also is half full. So we don't know --
9 so we don't know why this is half full.
10 Again, we can't trace an entire chain of
11 custody. Just sort of very small pieces
12 of that. So we don't know why this is
13 half full. Was it something that was --
14 stayed within Johnson & Johnson. Did
15 somebody at one point in time say, "We
16 need an example of this kind of
17 packaging," and this was donated by
18 somebody because it was the type of
19 packaging they needed. We just don't
20 know.

21 Q. That's just speculation on
22 your part?

23 A. It is speculation.

24 Q. You have no evidence that

1 would indicate that this was any period
2 of time that this particular sample was
3 out of the custody of either Johnson &
4 Johnson or a Johnson & Johnson company?

5 A. That's because we don't have
6 evidence regarding its entire chain of
7 custody. There's just not enough
8 information to piece together a full
9 enough chain of custody for this.

10 Q. So you -- so you don't have
11 evidence that would indicate that it was
12 ever out of the control of Johnson &
13 Johnson or Johnson & Johnson company?

14 A. We don't. But we also don't
15 have evidence to show that it -- there's
16 not enough evidence to prove that it --
17 or to show that it was in control. It
18 could have been either way. There's just
19 not enough evidence.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-72.)

23 BY MR. LAPINSKI:

24 Q. I'll hand you Exhibit 72.

1 And these are photographs
2 related to STS017. Based upon your
3 review of the photographs do these
4 photographs relate to sample list entry
5 STS017?

6 A. They appear to correspond,
7 yes.

8 Q. And on the second page of
9 the photographs, there are merchandise
10 notice labels attached to it, correct?

11 A. That is correct.

12 Q. And they're from 1974?

13 A. Yes.

14 Q. And that's during a period
15 of time when Johnson & Johnson had a
16 policy in place that changes to the
17 label, samples would be sent to the
18 Johnson & Johnson museum?

19 A. That is correct. It does
20 fall during that time.

21 (Document marked for
22 identification as Exhibit
23 Gurowitz-73.)

24 BY MR. LAPINSKI:

1 Q. Exhibit 73. This is related
2 to STS018. Based upon your review of the
3 photographs, do these photos relate to
4 the sample list entry STS018?

5 A. They appear to relate to it,
6 yes. Here again, this is from -- marked
7 as being from 1985, which is after the
8 old Johnson & Johnson museum was closed.
9 So this was not something that would have
10 been sent to that entity in New
11 Brunswick.

12 Q. But this is something that
13 was maintained in Johnson & Johnson's
14 offsite storage, correct?

15 A. It was found in offsite
16 storage among boxes that were labeled
17 marketing. But we do not know how it
18 originally got into those.

19 (Document marked for
20 identification as Exhibit
21 Gurowitz-74.)

22 BY MR. LAPINSKI:

23 Q. Exhibit 74. And these
24 photographs relate to STS021. Based upon

1 review of the photographs, do these
2 photographs relate to the entry on the
3 sample list for STS021?

4 A. It appears to correspond.
5 And, again, this is half full.

6 (Document marked for
7 identification as Exhibit
8 Gurowitz-75.)

9 BY MR. LAPINSKI:

10 Q. This is Exhibit 75. These
11 are related to STS031. Based upon your
12 review of these photographs, do these
13 photos correspond with the sample list
14 entry STS031?

15 A. It appears to. This notes
16 that this was part of a twin pack but
17 there is only one bottle from that twin
18 pack. If that's the case, it appears to
19 correspond based on this information.

20 Q. Based upon the two
21 photographs that are there, are you able
22 to make a definitive determination that
23 there's only one bottle, or is it
24 possible that there's a second bottle and

1 these are stacked one on top of another?

2 A. I cannot tell from the
3 photograph.

4 Q. Okay. There is a sticker on
5 the second page of the photograph,
6 correct?

7 A. Yes. There are several
8 stickers.

9 Q. Okay. And the sticker at
10 the top does refer to a merchandise
11 notice change from 1969?

12 A. That's correct.

13 Q. And it also refers to
14 12-and-a-half-ounce twin pack, correct?

15 A. That is correct.

16 Q. And would that -- the
17 references on that sticker conform to the
18 entry and the information in the sample
19 list for STS031?

20 A. It would. The sample list
21 notes that there's -- it says plastic
22 curved bottle. So I assume that means
23 there's only one bottle.

24 Q. And the merchandise notice

1 on the second page, that notice from 1969
2 was during the period of time where the
3 Johnson & Johnson company would send a
4 sample of the product to the Johnson &
5 Johnson museum at the time there was a
6 change, correct?

7 A. It was during that time.
8 However, the label at the bottom of the
9 back says "Property of PPC Museum,
10 Milltown, New Jersey." We do not know if
11 this was sent to the old Johnson &
12 Johnson museum in New Brunswick or the
13 PPC museum, whatever that might have
14 been.

15 Q. Okay. PPC was a Johnson &
16 Johnson company at the time that it was
17 in existence, correct?

18 A. I believe it was in
19 existence in 1959. But I would have
20 to -- would have to look it up to confirm
21 that.

22 Q. My question was when it was
23 in existence it was a Johnson & Johnson
24 company?

1 A. Yes.

2 (Document marked for
3 identification as Exhibit
4 Gurowitz-76.)

5 BY MR. LAPINSKI:

6 Q. Ms. Gurowitz, I'm going to
7 hand you a document that has been marked
8 as Exhibit 76. If you can take a minute
9 to review that, I would appreciate it.
10 If you would let me know when you are
11 ready for me to ask a couple questions
12 regarding this exhibit.

13 A. I'm ready.

14 Q. Ms. Gurowitz, earlier today
15 you had mentioned a couple times that
16 there were transfer records that you had
17 reviewed in preparation for your
18 deposition, correct?

19 A. Correct.

20 Q. And they related to the
21 transfer of offsite storage materials
22 from Johnson & Johnson to Leahy business,
23 correct?

24 A. Correct.

1 Q. Is Exhibit 76 the document
2 that you were referring to?

3 A. Yes, it appears to be so.

4 (Document marked for
5 identification as Exhibit
6 Gurowitz-77.)

7 BY MR. LAPINSKI:

8 Q. I'm going to hand you a
9 document that has been marked as
10 Exhibit 77.

11 A. And I just want to say, it
12 was -- these were the -- transferred from
13 the operating unit, the consumer. This
14 is -- here it's called -- it says
15 Johnson & Johnson Baby Products.

16 Q. Okay. So -- so I understand
17 correctly, the purpose for your
18 clarification is that it was not
19 transferred by Johnson & Johnson. It was
20 transferred by their operating unit, was
21 Johnson & -- at the time was Johnson &
22 Johnson Baby Products?

23 A. Correct.

24 Q. I think I was going to hand

1 you, did I hand you Exhibit 77?

2 A. Yes.

3 Q. Ms. Gurowitz, have you seen
4 this document before?

5 A. I believe I have, yeah.

6 Q. And is this a document that
7 you reviewed in preparation for your
8 deposition?

9 A. I believe so, yes.

10 Q. And on the first page
11 there's a listing of advertisements and
12 promotional materials.

13 Do you see that?

14 A. I do.

15 Q. And were ads also sent to
16 storage?

17 A. It appears from these
18 documents that they were, yes.

19 Q. Are you aware, other than
20 Exhibits 76 and 77, are you aware of any
21 other transfer documents related to
22 talcum powder products or the samples
23 that are contained on the sample list?

24 A. I am not. I don't see

1 Shower to Shower on here. But I'm not
2 aware, that I can think of, of any
3 others.

4 Q. If you would go back to
5 Exhibit 49, please.

6 Got it?

7 A. Yes.

8 Q. Okay. And we had talked
9 briefly in regard to Exhibit 49 and the
10 sample JBP-135.

11 If you would turn to the
12 second page, which again has the Reg
13 Number 74,097.

14 Do you see that?

15 A. Yes, I do.

16 Q. Did you testify earlier that
17 that was a trademark registration number?

18 A. I don't know that for a
19 fact, but I said based on the fact that
20 the larger label that you can see on Page
21 3 and 4 says "U.S. trademark
22 application," it's possible that could
23 refer to that.

24 Q. And if that were a trademark

1 registration, would this sample have been
2 kept as part of a retention policy?

3 A. It likely -- it falls into
4 those time parameters, so it's possible
5 that it was. We don't have any
6 information regarding keeping samples for
7 trademark registration, just for labeling
8 changes.

9 Q. If I recall, did you testify
10 earlier that it was a practice of the
11 Johnson & Johnson legal department to
12 retain samples related to trademark?

13 A. Related to trademark
14 history, yes.

15 Q. Okay. If you would go to --
16 lastly, go back to Exhibit 61. The first
17 three pages of -- I'll wait till you get
18 to it.

19 This is the exhibit that had
20 two different products for JBP-294. And
21 what I'd like you to do is just look at
22 the first three pictures that relate to
23 the old canister we discussed that I
24 believe was a wartime canister.

1 If you would look at STS016
2 in the sample list -- I'm sorry, JBP-016
3 in the sample list.

4 A. I'm going to get there.

5 Q. It's on Page ID 11866.

6 A. I have Page 11866. I'm
7 sorry. Could you repeat the number?

8 Q. Sure. JBP-016?

9 A. Okay.

10 Q. And as based upon your
11 review of those three documents, do those
12 photographs correspond with the sample
13 list entry JBP-016?

14 A. They appear to.

15 Q. Okay.

16 MR. LAPINSKI: Off the
17 record.

18 THE VIDEOGRAPHER: The time
19 is 5:34 p.m. We are off the
20 record.

21 (Brief pause.)

22 THE VIDEOGRAPHER: We are
23 back on the record at 5:35 p.m.

24 BY MR. LAPINSKI:

1 Q. Ms. Gurowitz, you have been
2 responsible for the maintenance of
3 samples at the J&J museum since 2006,
4 correct?

5 A. Correct.

6 Q. Okay. Were you ever
7 provided with a litigation hold notice by
8 Johnson & Johnson?

9 MS. FOURNIER: Objection.
10 Outside the scope.

11 THE WITNESS: For this I
12 was, yes.

13 BY MR. LAPINSKI:

14 Q. And when -- when were you
15 provided with that?

16 MS. FOURNIER: Objection.

17 THE WITNESS: I don't
18 remember when it came out. So I'd
19 have to go back and look.

20 BY MR. LAPINSKI:

21 Q. Within the last year?
22 Within the last two years?

23 A. It's safe to say within the
24 last two years.

1 MR. LAPINSKI: Okay. I have
2 no further questions.

3 THE VIDEOGRAPHER: The time
4 is 5:35 p.m. We are off the
5 record.

6 (Brief pause.)

7 THE VIDEOGRAPHER: We are
8 back on the record at 5:37 p.m.

9 MS. FOURNIER: As I begin,
10 because I've now been reprimanded
11 by my colleagues multiple times,
12 I'm going to put on the record
13 what we discussed, which is an
14 objection by one is an objection
15 for all.

16 Do you have any issue with
17 that?

18 MR. LAPINSKI: No problem
19 with that.

20 MS. FOURNIER: Thank you.

21 - - -

22 EXAMINATION

23 - - -

24 BY MS. FOURNIER:

1 Q. Good afternoon,
2 Ms. Gurowitz. I have a couple questions
3 to ask you on behalf of Johnson &
4 Johnson.

5 I want to start by having
6 you look at the list, the sample list.
7 We've spent a lot of time talking about
8 the section that is -- we're just sort of
9 referring to as the offsite storage,
10 right?

11 A. Correct.

12 Q. Can you just walk us
13 through, so that everyone is on the same
14 page, the sequence of where the bottles
15 on that section sort of start to finish,
16 where they were?

17 A. Sure. So I have been
18 researching and attempting to put
19 together a chain of custody. And
20 unfortunately, we do not have enough good
21 information to do that.

22 So when the call went out to
23 locate any potential samples that might
24 be around, these samples were discovered

1 in offsite storage. They had been there
2 so long that nobody literally knew that
3 they were there, it came as a surprise to
4 everyone. I had -- I had long heard that
5 in many cases, when the objects were sent
6 back to the operating units from the old
7 Johnson & Johnson museum, that, you know,
8 nobody knows what happened to them
9 because nobody is still around from that
10 time.

11 So I think that nobody knew
12 that these had been in offsite storage.
13 And so it was discovered that they were
14 in offsite storage. And then I attempted
15 to put together, based -- you know, if I
16 could, based on the information that
17 still existed, a chain of custody.

18 And unlike the PTI samples,
19 where they're modern, people keep
20 records, now there are electronic
21 records, these are so old that they're
22 just -- the records were not there.

23 We can assume from those
24 marketing notices that in the time

1 between the '50s and the '70s, maybe
2 perhaps up to 1982 or close to that, that
3 whenever there are -- as per the law
4 department, whenever there was a
5 packaging change or a change to the
6 label, that they sent a sample to the old
7 Johnson & Johnson museum, which was run
8 by the law department, so they could
9 preserve trademark history of the
10 products.

11 There are a lot of products
12 that are labeled as marketing that fall
13 outside those parameters. The people I
14 talked to in marketing, including Barbara
15 Brewer, who is one of the longest -- she,
16 I think, was the longest-tenured person
17 that Sarita Finnie could find, and she
18 even did not know how those got there.

19 So there are things that
20 were in those -- in those boxes labeled
21 marketing that may not have come from the
22 old law department museum. They just --
23 whoever made that determination might
24 have seen, okay, these are product

1 samples. We'll just call them marketing
2 in the same way that if you had a box
3 full of staplers, you might call it
4 office supplies.

5 Q. Okay. And so part of the
6 bottles or some of the bottles, you do
7 believe came from the old museum; is that
8 right?

9 A. That is correct.

10 Q. And then at some point those
11 were sent back to what you keep referring
12 to as the, quote, operating companies,
13 correct?

14 A. Correct.

15 Q. And do we have any
16 information about, when those were sent
17 to the operating companies, what did
18 people do with them?

19 A. Based on the transfer sheets
20 and based on the memo about closing the
21 old law department, the Kilmer Museum, it
22 looks like that was done in the 1982 time
23 frame.

24 And so when we were engaged

1 in the project to restore the museum in
2 the 2014 to 2016 time frame, I had
3 reached out to folks at the operating
4 companies because we were looking for
5 artifacts to display from a variety of --
6 a variety of places in the company.

7 And I said, "Do you have any
8 of these old products?" And nobody knew
9 anything about them. They said, "No,
10 this is way before our time. We would
11 presume we don't have these. Nobody
12 knows. Nobody has even heard of this."

13 Q. So all we know is that
14 sometime after 1982, but when exactly we
15 don't know; is that fair?

16 A. Correct.

17 Q. Okay. So shifting gears
18 slightly, we then talked about the
19 merchandise notice change -- change
20 orders, right? And one of the questions
21 that I wanted to ask you about is we
22 looked at that policy. And does that
23 policy have -- does that policy state
24 that the samples sent have to be new

1 samples?

2 MR. LAPINSKI: Object to the
3 form of the question.

4 THE WITNESS: They do not.

5 BY MS. FOURNIER:

6 Q. Does it state whether they
7 have -- they can be open or closed?

8 A. The policy did not mention
9 anything about open or closed. It just
10 said we need to capture examples of
11 changes to the labeling or package shape.

12 MR. LAPINSKI: Objection.

13 BY MS. FOURNIER:

14 Q. Does the policy refer to
15 whether the package needs to be sourced
16 from J&J or an outside source?

17 A. It did not.

18 Q. So do you know with respect
19 to the bottles that have those
20 merchandise notice change on them, what
21 the original source of the bottle is?

22 A. No, we do not.

23 Q. In addition, during that
24 period of time of the 1960s to 1980s, is

1 it fair to say that there was some
2 collection of bottles that did not come
3 into the possession of the museum because
4 of merchandise notice changes?

5 MR. LAPINSKI: Object to the
6 form of the question.

7 THE WITNESS: That is
8 correct.

9 BY MS. FOURNIER:

10 Q. So if you can go and dig out
11 of your pile, I want you to take out
12 Exhibit 43 and 45.

13 A. I have to dig.

14 Q. It's relatively early in the
15 Johnson's Baby Powder set?

16 A. Okay. I'm looking. They
17 start in the '70s for some unknown
18 reason.

19 MR. LAPINSKI: What are the
20 JBP numbers that they relate to?

21 MS. FOURNIER: Exhibit 45 is
22 JBP-099, and Exhibit 43 is
23 JBP-096.

24 THE WITNESS: It was -- I'm

1 sorry. Could you just tell me
2 exhibit --

3 BY MS. FOURNIER:

4 Q. 45 and 43. 43 and 45 is
5 probably the order you'll come across
6 them.

7 A. Here is 45.

8 Q. Let's start with 45 then.

9 A. Sure.

10 Q. Turn to the fourth page of
11 45. It's a picture of one of the sides.

12 A. Yes.

13 Q. And it has taped to it a
14 sticker. What is your understanding of
15 what that -- that label or whatever you
16 want to call it taped to it is?

17 A. My understanding is that
18 corresponds to a merchandising notice
19 from 1/15/1970, Johnson's Baby Powder
20 hospital, four ounces. I do not know
21 what Hadley PPD refers to.

22 Q. And so earlier in your
23 testimony you said that you could surmise
24 that this came into the possession of the

1 museum because of the merchandise notice
2 changes; is that right?

3 A. That's possible. Yes.

4 Q. So let's look at Exhibit 43
5 if you will. Okay. If you look at
6 Exhibit 43, do any of the pictures
7 contain a label like the one we were
8 looking at on Exhibit 45?

9 A. No, they do not.

10 Q. Do we have any knowledge of
11 how this particular bottle came into
12 possession of the old museum?

13 A. We do not. We do not.

14 Q. Okay. I'd also like you to
15 take a quick look at Exhibit 49, which we
16 have looked at a couple times now. What
17 can you tell us, if anything, about these
18 sorts of containers and how the lid
19 works?

20 A. Okay. So these are slightly
21 older containers. This one has two
22 dates, 1963 and 1964. So as I mentioned,
23 products were not sealed until the 1980s.
24 So this would have been open. You could

1 open it and access the contents at any
2 time.

3 The top, there's not a
4 photograph of the top, I believe. But
5 the top was sort of a twist container
6 where you would just twist it, and it
7 would line up holes, which would open,
8 and then you could access the contents.

9 Q. And can you screw this top
10 all the way off?

11 A. You can take that top off.
12 If you notice, there's kind of a -- lip
13 isn't the right word, but the top -- the
14 top part that has the very top of the
15 container, it's a separate piece from the
16 rest of the container. So you would be
17 able to pull that off.

18 Q. And so do you know if the
19 contents of the powder in this particular
20 container, do we have any way of knowing
21 whether it was the original powder from
22 this container?

23 MR. LAPINSKI: Object to
24 form of the question.

1 THE WITNESS: We don't. And
2 if you look -- if you look at the
3 first photograph, the front page,
4 if you look at the right side of
5 that container, it looks like
6 there is a gap there. And it's a
7 little higher than on the left.

8 So it looks like that may
9 have been pulled off at some
10 point.

11 BY MS. FOURNIER:

12 Q. During this period of time,
13 do you know if the museum also received
14 donations?

15 A. The museum has received
16 donations for many decades. So yes, it
17 would be likely we received donations.

18 MS. FOURNIER: Can I get
19 some stickers? Thank you.

20 (Document marked for
21 identification as Exhibit
22 Gurowitz-78.)

23 BY MS. FOURNIER:

24 Q. I'm going to pass you

1 something. I think we're on 78.

2 Actually, I've handed you
3 something that we marked as Exhibit 78,
4 which is two pages. First can you just
5 look at those and tell me if they appear
6 to be the same picture just one in black
7 and white and one in color?

8 A. They appear to be the same
9 picture.

10 Q. Okay. And have you seen
11 these pictures before?

12 A. Yes.

13 Q. What can you tell us about
14 this particular bottle based on these
15 pictures?

16 A. This is a very rusted tin, a
17 Johnson's Baby Powder tin in very poor
18 condition. By the trademark, it's got
19 the red chain, the circular logo. So
20 that looks like it was marketed outside
21 of the United States. And this was one
22 that was found in a shipwreck. So
23 presumably it was somewhere at the bottom
24 of the ocean.

1 BY MS. FOURNIER:

2 Q. So do you think this is
3 potentially an example of a donation
4 during the period?

5 A. I think this is absolutely
6 an example of something that was donated.

7 (Document marked for
8 identification as Exhibit
9 Gurowitz-79.)

10 BY MS. FOURNIER:

11 Q. Let me mark the next one as
12 79. Let's start with 79. The same
13 question. If you can just look at the
14 two pages and confirm that this is a
15 black-and-white but then a color photo of
16 the same bottle?

17 A. Yes, I can confirm that.

18 Q. And can you read for us what
19 this particular bottle says on it?

20 A. Sure. It says, "Sample from
21 Mr. Burchfield's cabinet, return 1928."

22 Q. Any idea who Mr. Burchfield
23 is?

24 A. No idea.

1 Q. Do you know if he worked at
2 J&J or was outside the company?

3 A. We have no way of knowing
4 that or tracking that down.

5 Q. Any idea if Mr. Burchfield
6 is responsible for any of the other
7 containers on the list?

8 A. Not unless it was noted.
9 The only thing we know is clearly
10 somebody did not return this to
11 Mr. Burchfield.

12 Q. Fair enough. Let me switch
13 gears a little bit. You talked about, if
14 we think about the second section of that
15 list, that's the section that was sourced
16 from today's museum.

17 And you, I believe,
18 testified that you were part of the group
19 or you were responsible for finding those
20 and then actually putting them down in
21 packages to ship off to the lab; is that
22 correct?

23 A. That is correct.

24 Q. Now, as to the first

1 section, the section that we spent more
2 time, the stuff that came from marketing
3 and offsite storage, I believe you
4 testified that you didn't know who
5 exactly put that into boxes and sent that
6 off; is that correct?

7 A. That's correct.

8 Q. But do you have an
9 understanding of what group of people
10 were responsible to do that once they
11 were found?

12 A. Yes, it would have been some
13 combination of the legal folks, the
14 records management folks, and the folks
15 that worked at the consumer company.

16 Q. So was it the same group of
17 people who worked with you on your
18 section of the bottles?

19 A. Presumably some of them
20 would probably have been the same.

21 Q. Okay. And then the last
22 question I have for you is, can we go
23 back to the very last picture that we
24 looked at. It was the one that was

1 attached to the double pack. And we were
2 trying to figure out maybe if we could
3 understand which sample that was.

4 MS. FOURNIER: What was the
5 exhibit number? Does anybody have
6 that? 75? Okay. Thank you.

7 MR. LAPINSKI: I think it
8 was 61.

9 MS. FOURNIER: Oh, Exhibit
10 61. Thank you.

11 THE WITNESS: This is
12 Exhibit 61, the one that had that
13 anomalous --

14 BY MS. FOURNIER:

15 Q. That's right.

16 A. Yeah.

17 Q. And we just went through on
18 this exhibit listing and found that it
19 potentially matches to JBP-016, right?
20 Is that correct?

21 A. Potentially it could match
22 to that, yes.

23 Q. Okay. I'd like you to take
24 a look at the entry for JBP-223. And let

1 me know whether you think that it could
2 potentially match that entry as well?

3 MR. LAPINSKI: Did you say
4 JBP-223?

5 MS. FOURNIER: 223. I'm
6 looking at Page 11880, Page ID.
7 Page 33 of 91.

8 THE WITNESS: JBP-223?

9 BY MS. FOURNIER:

10 Q. That's correct.

11 A. That does say it is -- it is
12 a cardboard cylinder from the right time.
13 I think the volume is different though.

14 Q. Okay. Are there other
15 cardboard cylinder samples on this list?

16 A. Yes. I believe there are.

17 Q. And do you know with
18 certainty if that one is 016?

19 A. We cannot determine with
20 certainty which one that is. I would
21 have to look and see what the sizes were,
22 if there's another cardboard cylinder
23 that was one and three-quarters ounces.
24 We would not be able to tell which one is

1 which.

2 MS. FOURNIER: Got it.

3 Those are all my questions.

4 THE VIDEOGRAPHER: The time
5 is --

6 MR. LAPINSKI: Two
7 questions, so let's go off for
8 now.

9 THE VIDEOGRAPHER: The time
10 is 5:54 p.m. We're off the
11 record.

12 (Brief pause.)

13 THE VIDEOGRAPHER: Back on
14 the record at 5:55 p.m.

15 - - -

16 EXAMINATION

17 - - -

18 BY MR. LAPINSKI:

19 Q. Ms. Gurowitz if you can
20 refer to Exhibit 78?

21 A. I'll just need a moment to
22 find it.

23 Q. We're going to look at 78
24 and 79, which were the last two given to

1 you by counsel.

2 A. Yes. Okay.

3 Q. Exhibit 78 you said was
4 photographs of a sample that was donated
5 to Johnson & Johnson, correct?

6 A. Correct.

7 Q. And if you look at the color
8 photo on Page 2, I believe it says --
9 what we can see is, "Photo taken from,"
10 and then it has a July date, correct?

11 A. Correct.

12 Q. And would you agree that
13 someone within Johnson & Johnson took
14 steps to label this product that had been
15 donated to Johnson & Johnson?

16 A. No, I would not agree.
17 Somebody labeled it. But we don't know
18 if it was a Johnson & Johnson person or
19 the person who donated it.

20 Q. But it's a donated -- as a
21 donated product, it's labeled as such,
22 correct?

23 A. It is labeled, but we don't
24 know who labeled it.

1 Q. As far as -- if you would go
2 to Exhibit 79. And Exhibit 79 is a
3 sample that came from Mr. Burchfield's
4 cabinet, correct?

5 A. Correct.

6 Q. And someone did label this
7 as a sample that came from an outside
8 source, correct?

9 A. Correct.

10 Q. In regard to Exhibit 49,
11 which was one that you should have it
12 on -- pretty close to the top because we
13 just talked about it.

14 Okay. You testified that
15 you had not examined or handled any of
16 the offsite -- any of the offsite
17 samples, correct?

18 A. Correct.

19 Q. So you haven't examined
20 Exhibit Number 49, correct?

21 A. Not in person, no.

22 Q. So your testimony about the
23 top possibly being off is based only on
24 the photograph and is speculation

1 otherwise?

2 A. It is based on the
3 photograph and the fact that there's a
4 gap here and it looks like it -- it looks
5 like it was -- there's more space here
6 than there is on the other side. So it's
7 based on that.

8 Q. And the top of that is a
9 removable top, correct?

10 A. If you are referring to this
11 entire top, yes. You can pull that off.

12 Q. Okay. And there became a
13 point in time where Johnson & Johnson
14 changed the design of their Baby Powder
15 bottles so that the top was no longer
16 removable, correct?

17 A. Well, initially the oldest
18 samples did not have this type of top.
19 Then for a number of decades they had
20 this type of top, and then they moved
21 away from it.

22 Q. And when did they move away
23 from that?

24 A. I believe this was moved

1 away from when they changed to plastic
2 packaging in 1963 time frame.

3 MR. LAPINSKI: Okay. No
4 more questions.

5 THE VIDEOGRAPHER: This
6 concludes today's deposition. The
7 time is 5:58 p.m. We are off the
8 record.

9 (Excused.)

10 (Deposition concluded at
11 approximately 5:58 p.m.)

12

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1
2 CERTIFICATE
3
4

5 I HEREBY CERTIFY that the
6 witness was duly sworn by me and that the
7 deposition is a true record of the
8 testimony given by the witness.

9 It was requested before
10 completion of the deposition that the
11 witness, MARGARET M. GUROWITZ, have the
12 opportunity to read and sign the
13 deposition transcript.

14
15 _____
16 MICHELLE L. GRAY,
17 A Registered Professional
18 Reporter, Certified Shorthand
19 Reporter, Certified Realtime
20 Reporter and Notary Public
21 Dated: July 20, 2018
22
23
24

25 (The foregoing certification
26 of this transcript does not apply to any
27 reproduction of the same by any means,
28 unless under the direct control and/or
29 supervision of the certifying reporter.)
30
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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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PAGE LINE CHANGE

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
hereby certify that I have read the
foregoing pages, 1 - 380, and that the
same is a correct transcription of the
answers given by me to the questions
therein propounded, except for the
corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

MARGARET M. GUROWITZ

DATE

Subscribed and sworn
to before me this

_____ day of _____, 20____.

My commission expires: _____

Notary Public

1	LAWYER'S NOTES		
2	PAGE	LINE	
3	_____	_____	_____
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Exhibit 175



macrone environmental services, inc.

200 OAKBROOK BUSINESS CENTER
5500 OAKBROOK PARKWAY
NORCROSS, GA 30093 • 404-449-8461

RECEIVED

FEB 2 1987

W. M. I.

28 January 19876

Windsor Minerals, Inc.
P. O. Box 680
Windsor, Vermont 05089

Attention: Mr. Roger N. Miller, President

Re: McCrone Project No. ME-3241

Dear Mr. Miller:

Under your Purchase Order QC-0548, we received nineteen talc samples for asbestos analysis by transmission electron microscopy. The samples were labelled as follows:

WMI 86-10	WMI 86-14	WMI 86-18	WMI 86-22	WMI 86-26
WMI 86-11	WMI 86-15	WMI 86-19	WMI 86-23	WMI 86-27
WMI 86-12	WMI 86-16	WMI 86-20	WMI 86-24	WMI 86-32
WMI 86-13	WMI 86-17	WMI 86-21	WMI 86-25	

Examination found no quantifiable amounts of asbestiform minerals. The limit of detection for each sample is below 0.001 weight percent.

Thank you for consulting McCrone Environmental Services, Inc.

Sincerely,

Thomas Kremer
Thomas Kremer

Electron Microscopist

James R. Millette

James R. Millette, Ph.D.
Manager, Laboratory Services

TK/JRM/mtw

cc: 1) Windsor Minerals, Inc.
Windsor VT
1) Mr. Roger N. Miller, President

EXHIBIT
J&J-355

a subsidiary of walter c. mcCrone associates, inc.
2820 SOUTH MICHIGAN AVENUE • CHICAGO, ILLINOIS 60616 • 312-842-7100



mccrone environmental services, inc.

200 OAKBROOK BUSINESS CENTER
5500 OAKBROOK PARKWAY
NORCROSS, GA 30093 • 404-449-8461

RECEIVED

FEB 2 1987

W. M. I.

PLEASE NOTE

It is our present policy to hold samples for 30 days after issuance of the analysis report at no additional charge to the client. At the end of the 30 day period, samples will be disposed of unless a written request to return has been received in our office. A sample return fee in the amount of U.S. certified postage plus 15% will be charged for each group of samples mailed. McCrone Environmental Services, Inc. will archive samples upon receipt of written notification from the client at a charge of \$ 0.50 per sample per month. Special arrangements will be made for samples received under specific "chain of custody" orders. Please contact our office if special handling is needed for your samples.

Sincerely,

James R. Millette, Ph.D.
Manager, Laboratory Operations

a subsidiary of **walter c. mccrone associates, inc.**

2820 SOUTH MICHIGAN AVENUE • CHICAGO, ILLINOIS 60616 • 312-842-7100

WINDSOR MINERALS, INC.

Samples to McCrone Environmental Services

October 13, 1986

West Windsor

Float Feed	April, 1986	WMI 86-10
Float Feed	May, 1986	WMI 86-11
Float Feed	June, 1986	WMI 86-12
Float Feed	July, 1986	WMI 86-13
Float Feed	August, 1986	WMI 86-14
Float Feed	September, 1986	WMI 86-15

Columbia

Grade 36	April, 1986	WMI 86-16
Grade 36	May, 1986	WMI 86-17
Grade 36	June, 1986	WMI 86-18
Grade 36	July, 1986	WMI 86-19
Grade 36	August, 1986	WMI 86-20
Grade 36	September, 1986	WMI 86-21

Columbia

Alpha Beta Product	April, 1986	WMI 86-22
Alpha Beta Product	May, 1986	WMI 86-23
Alpha Beta Product	June, 1986	WMI 86-24
Alpha Beta Product	July, 1986	WMI 86-25
Alpha Beta Product	August, 1986	WMI 86-26
Alpha Beta Product	September, 1986	WMI 86-27

Other

66-product from Rainbow test run, September 26, 1986	WMI 86-31
--	-----------

Cheryl Hill-Bennett
CC: Roger Miller
Robert Goff

Exhibit 176

Memo

To: William Ashton
cc: Regina Gallagher, Lorena Telofski, Mike Chudkowski
From: Joyce Payeur
Date: 10/20/00
Re: TALC CLOSET CLEANOUT & STORAGE

I was requested by Research Support Sciences to remove all powder items from the storage closet in Research North, second floor. The majority of items were from previous world talc surveys and Chinese competitor brands. These items were discarded today as standard chemical waste through Skillman Environmental Affairs.

I have relabeled and repackaged the following items for long-term storage in the Research North Sub-Basement Room, first corridor:

Historical Talc from Kilmer Museum - 1 Box
Asbestiform Mineral samples and purchased standards - 1 Box
Tremolite & Carbonate 95%- 1 Kilo Poly Jar
NY State Tremolite labeled XRD Std - 1 gallon paint can
Card File with Mine Locations and Photomicrographs of Talc

Please be aware of their presence and location.


Joyce Payeur - Technical Assurance

Technical Assurance

11

EXHIBIT
J&J-800

Protective Order

JNJNL61_000015761

Exhibit 177

From: McCarthy, Timothy [CPCUS]
Sent: Friday, November 21, 2008 1:55 PM
To: Bernhofer, Lauren [CPCUS]
Subject: RE: Baby Powder

Monica Popescu has been running these surveys since I've been here.
unless you have run anything recently, I am guessing your surveys are out of date. ergo,
PITCH them.

thanks

-----Original Message-----

From: Bernhofer, Lauren [CPCUS]
Sent: Friday, November 21, 2008 8:52 AM
To: McCarthy, Timothy [CPCUS]
Subject: RE: Baby Powder

Tim,

Do you have an idea of what the retention time would be on information related to the
CTFA ingredient surveys we have responded to over the past few years? I can show you if you
come over to see the Talc files.

Thanks,
Lauren

-----Original Message-----

From: McCarthy, Timothy [CPCUS]
Sent: Friday, November 21, 2008 8:46 AM
To: Bernhofer, Lauren [CPCUS]
Subject: RE: Baby Powder

great reading!

I may take a walk up north to familiarize myself with the talc goodies you have.

thanks

-----Original Message-----

From: Bernhofer, Lauren [CPCUS]
Sent: Friday, November 21, 2008 8:41 AM
To: McCarthy, Timothy [CPCUS]; Casalvieri, Joan [CPCUS]
Subject: RE: Baby Powder

Hi Tim,

I don't think you would want to share this document, but FYI, I thought
you would find it interesting. Not exactly hundreds of years old, but close to it. Dr. Lord
was the Director of the Research Foundation when I first came to J&J, but retired shortly
after. He just passed away this last year at a very respectable old age!

More seriously, we have about 4 file drawers of info on Talc over here.

Lauren

<< File: Talc_1978.pdf >>

-----Original Message-----

From: McCarthy, Timothy [CPCUS]
Sent: Friday, November 21, 2008 8:15 AM
To: Bernhofer, Lauren [CPCUS]; Casaltvieri, Joan [CPCUS]
Subject: FW: Baby Powder

I can surmise that any tox studies conducted on J Baby Powder precede even Lauren's tenure by several thousands of years.

best I could probably cough up would be a literature review on talc plus an IFRA compliance statement.

any better ideas?

-----Original Message-----

From: Clayton, Tom [MEDGB]
Sent: Friday, November 21, 2008 7:47 AM
To: McCarthy, Timothy [CPCUS]; Auld, Karen [CPCUS Non J&J]
Cc: Bernhofer, Lauren [CPCUS]; Casaltvieri, Joan [CPCUS]
Subject: RE: Baby Powder

Hi Tim,

Thanks for the info. I am after the toxicological / biocompatibility data for the J&J Baby powder in order for our product safety officer to say that it is ok for us to use this as a processing aid. The only reason why we need this information, is that the processes that it will be used on, it will be in direct contact with our devices that, in turn, come into contact with skin / open lesions etc..

Do you have this information available? I presume that the powder has had this data compiled during development?

Thanks,
Tom.

-----Original Message-----

From: McCarthy, Timothy [CPCUS]
Sent: 19 November 2008 17:11
To: Auld, Karen [CPCUS Non J&J]; Clayton, Tom [MEDGB]
Cc: Bernhofer, Lauren [CPCUS]; Casaltvieri, Joan [CPCUS]
Subject: FW: Baby Powder

Tom/Karen: Johnson's Baby Powder is a cosmetic product, not a device or OTC drug.

Although we use talc, USP in our North America manufacture of J Baby Powder, it contains a small amount (< 0.5%) fragrance, itself a complex blend of chemicals. I am uncertain how fragrance components may impact your process.

J&J Consumer has a very good relationship with our vendor of talc (Rio Tinto, formerly known as Luzenac). Would it be better to go right to our source of talc, USP?

It just so happens that I have a meeting this afternoon on-site with the Regulatory Affairs Manager from Rio-Tinto to discuss some talc issues.

if you want to go right to R-T on this:
Mark Zamek, Sr Key Account Manager, Rio-Tinto Minerals, 610 530-7850
(cell: 908 334-0850); mark.zamek@riotinto.com
Kent Cutler, VP Sales, 303 713-5500; kent.cutler@riotinto.com

please get back to us, if this is not helpful

Tim

908 874-1232

-----Original Message-----

From: Bernhofer, Lauren [CPCUS]
Sent: Tuesday, November 18, 2008 10:05 AM
To: Clayton, Tom [MEDGB]
Cc: McCarthy, Timothy [CPCUS]
Subject: FW: Baby Powder

Hi Tom,

I am forwarding you question to Tim McCarthy, who is our Toxicologist responsible for baby powder support. He is probably the best person to help you.

Tim - Please see Toms question at the bottom of this email string, regarding the proposed use of J&J Baby Powder in manufacturing of wound care products.

Best Regards,
Lauren

-----Original Message-----

From: Clayton, Tom [MEDGB]
Sent: Tuesday, November 18, 2008 9:34 AM
To: Bernhofer, Lauren [CPCUS]
Subject: FW: Baby Powder

Hi Lauren,
I have been given your name as a possible contact for the information I requested below. Please would you be able to help?

Kind regards,
Tom.

Tom Clayton
Quality Engineer
Johnson & Johnson Wound Management
Airebank Mill, Gargrave, North Yorkshire, BD23 3RX
Tel: +44 (0) 1756 747249
Fax: +44 (0) 1756 748403

<mailto:tclayto1@its.jnj.com>

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Livingston, West Lothian, EH54 0AB. Registered in Scotland, No SC 132162

P Before printing this message, make sure that it's necessary.

-----Original Message-----

From: Auld, Karen [CPCUS Non J&J]
Sent: 18 November 2008 14:32
To: Clayton, Tom [MEDGB]
Subject: RE: Baby Powder

Tom,

I don't have access to that type of information.

I would recommend you try Lauren Bernhofer. See works in toxicology and may be able to provide you with the information you need.

Hope this helps.

Karen

-----Original Message-----

From: Clayton, Tom [MEDGB]
Sent: Tuesday, November 18, 2008 9:25 AM
To: Auld, Karen [CPCUS Non J&J]
Subject: RE: Baby Powder

Hi Karen,

Our Product Safety Officer has asked if you can provide biocompatibility data including cytotoxic data, and clinical studies for the talc baby powder?

This information, if available, would be of great use when completing the product safety approval request.

Thanks in advance,
Tom.

-----Original Message-----

From: Auld, Karen [CPCUS Non J&J]
Sent: 14 November 2008 18:14
To: Clayton, Tom [MEDGB]
Cc: Carbonetta, Lou [CPCUS]
Subject: RE: Baby Powder

Tom,

Attached are North American MSDSs. Not sure if you needed talc or corn starch so I attached both.

Hope this helps.

Karen Auld
EHS Consultant

<< File: MSDS Baby Powder Cornstarch.pdf >> << File: MSDS
Baby Powder Talc.pdf >>

-----Original Message-----
From: Carbonetta, Lou [CPCUS]
Sent: Friday, November 14, 2008 1:07 PM
To: Clayton, Tom [MEDGB]
Cc: Auld, Karen [CPCUS Non J&J]
Subject: RE: Baby Powder

Tom,

I was given the name Karen Auld. Try her. She is on the
e-mail system. Let me know the results of your search.

Lou

-----Original Message-----
From: Clayton, Tom [MEDGB]
Sent: Friday, November 14, 2008 3:17 AM
To: Carbonetta, Lou [CPCUS]
Subject: RE: Baby Powder

Thanks Lou,
I appreciate your help.
Tom.

-----Original Message-----
From: Carbonetta, Lou [CPCUS]
Sent: 13 November 2008 22:48
To: Clayton, Tom [MEDGB]
Subject: RE: Baby Powder

I will look into it.

Lou

-----Original Message-----
From: Clayton, Tom [MEDGB]
Sent: Thursday, November 13, 2008 11:05 AM
To: Carbonetta, Lou [CPCUS]
Cc: Whaites, Adam [MEDGB]; Lewis, Joanne [MEDGB]
Subject: Baby Powder

Hi Lou,
I'm hoping you can help me with something totally unrelated to
UltraHeal!

We are currently using BIOSORB* powder on one of our machines
as a processing aid, and the supply of this is becoming very sparse. The operators are
wanting to use Johnson's Baby Powder as a replacement, but I would like to get a health
hazard assessment on the powder before saying yes.

As you are the only person I know in the Consumer group, I am wondering if you know anybody who would be able to provide an MSDS or data sheet relating to J&J baby powder? I'll then be able to use this as a starting block to formulating a risk assessment.

Thanks in advance,
Tom.

Tom Clayton
Quality Engineer
Johnson & Johnson Wound Management
Airebank Mill, Gargrave, North Yorkshire, BD23 3RX
Tel: +44 (0) 1756 747249
Fax: +44 (0) 1756 748403

<mailto:tclayto1@its.jnj.com>

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JNJ000368489

Metadata

AttachCount	0	ORIGINAL
BegAttach	JNJ 000368489	ORIGINAL
Confidentiality	N	ORIGINAL
Custodian	McCarthy, Timothy	ORIGINAL
DateCreated	01/09/2010 12:00 AM	ORIGINAL
DateMod	11/21/2008 12:00 AM	ORIGINAL
EndAttach	JNJ 000368494	ORIGINAL
FileName	RE: Baby Powder	ORIGINAL
FileSize	68096.00	ORIGINAL
PgCount	6	ORIGINAL

Exhibit 178



McCrone Environmental Services, Inc.
1412 OAKBROOK DRIVE • SUITE 100
NORCROSS, GA 30093 • 404-368-9600

FILE COPY

26 November 1990

Mr. Michael J. Keener
Quality Control Manager
Cyprus Windsor Minerals Corporation
P.O. Box 680
Windsor, Vermont 05089

Dear Mr. Keener:

Under your letter of authorization dated 02 November 1990, we received three (3) talc samples for asbestos analysis by transmission electron microscopy. The samples were labelled as follows:

CVM 90-28
CVM 90-29
CVM 90-30

Examination found no quantifiable amounts of asbestiform minerals. Thank you for consulting McCrone Environmental Services, Inc.

Sincerely,

E. Kent Sprague
Electron Microscopist

EKS:ljf
ME-7882

a member of **the mccrone group**

850 PASQUINELLI DRIVE • WESTMONT, ILLINOIS 60559 • 708-887-7100

J&J-0007794

Quet#
911453

ME-7882
MA90009

CYPRUS WINDSOR MINERALS CORP.
P.O.BOX 680
WINDSOR, VERMONT 05089
TELEPHONE (802) 484-7763

Mr. James R. Millette, Ph.D.
Electron Optics Group
McCrone Environmental Services, Inc.
1412 Oakbrook Dr. #100
Norcross, GA 30093 - 2243

November 2, 1990

Dear Mr. Millette:

We are sending the next series of three samples for
asbestiform analysis via transmission electron microscopy.
The samples are designated per attached list.

You may charge this work to our Purchase Order QC26388W.

Please send the results to Michael J. Keener, Quality
Control Manager, Eastern Operations, Cyprus Windsor Minerals.

Thank You

Sincerely,

Joan R. Johnson
Joan R. Johnson

Quality Assurance Lab Supervisor

Jrj
Enclosure

J&J-0007795

CYPRUS WINDSOR MINERALS CORPORATION
SAMPLES TO MCCRONE ENVIRONMENTAL SERVICES
NOVEMBER 1990

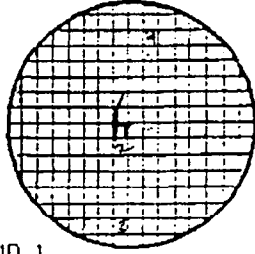
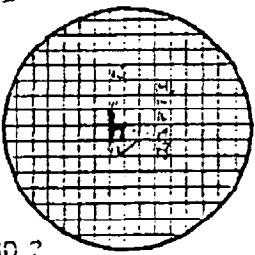
CWM 90 - 28

CWM 90 - 29

CWM 90 - 30

J&J-0007796

EPA LEVEL II TEM ANALYSIS

ME # <u>90009-1</u> McCrone ID# _____		 <p>GRID 1</p>  <p>GRID 2</p> <p>GRID MAPS</p>
PROJECT <u>CYPRESS WINDSOR</u>		
CLIENT ID <u>CWN 90-28</u>		
CLIENT _____		
COMMENTS _____		
VOLUME/AREA SAMPLED _____	DATE ANALYZED <u>11/19/90</u>	
FILTER AREA (mm ²) _____	PRIORITY <input type="checkbox"/> RUSH <input checked="" type="checkbox"/> REGULAR	SAMPLE TYPE <input type="checkbox"/> EPA II AIR <input type="checkbox"/> DUST (BY AREA) <u>cm²</u> <input type="checkbox"/> DUST (BY WT) <u>mg</u>
AVG GRID SQ AREA (SCum) _____	LOADING <input type="checkbox"/> LIGHT <input checked="" type="checkbox"/> MEDIUM <input type="checkbox"/> HEAVY	<input type="checkbox"/> WATER <input checked="" type="checkbox"/> TALC <input type="checkbox"/> LUNG TISSUE <input type="checkbox"/> OTHER
ANALYST <u>RR</u>	PLATE # _____	
CAL MAG <u>20,520</u> ^{+5,100x}	ED1 _____ ED2 _____	
# SQUARES COUNTED <u>20</u>	IMAGE _____	
TOTAL STRUCTURES COUNTED <u>1</u>		
DATA ENTRY BY _____	NOTES <u>FIBERS measured @ 20,520</u>	
DISC # _____	Scope <u>400</u> Acc. Volt <u>20</u> kV	

OBS	G/S	STRUCT	TYPE	LENGTH	WIDTH	# FIBERS	REP LENGTH	REP WIDTH	SAED	EDS	NOTES
51											20,540
52											
53											
54											5,400
55											
56				20.0	1.5						ANTHONY 11/12
57											
58											
59											
60											
511											20,540
512											5,400
513											
514											
515											
516											
517											
518											
519											
520											

McCrone Environmental Services, Inc.

J&J-0007797

JNJMX68_000012854

QUALITATIVE ELEMENT IDENTIFICATION

SAMPLE ID:MA90009-1 ANTHOPHYLLITE

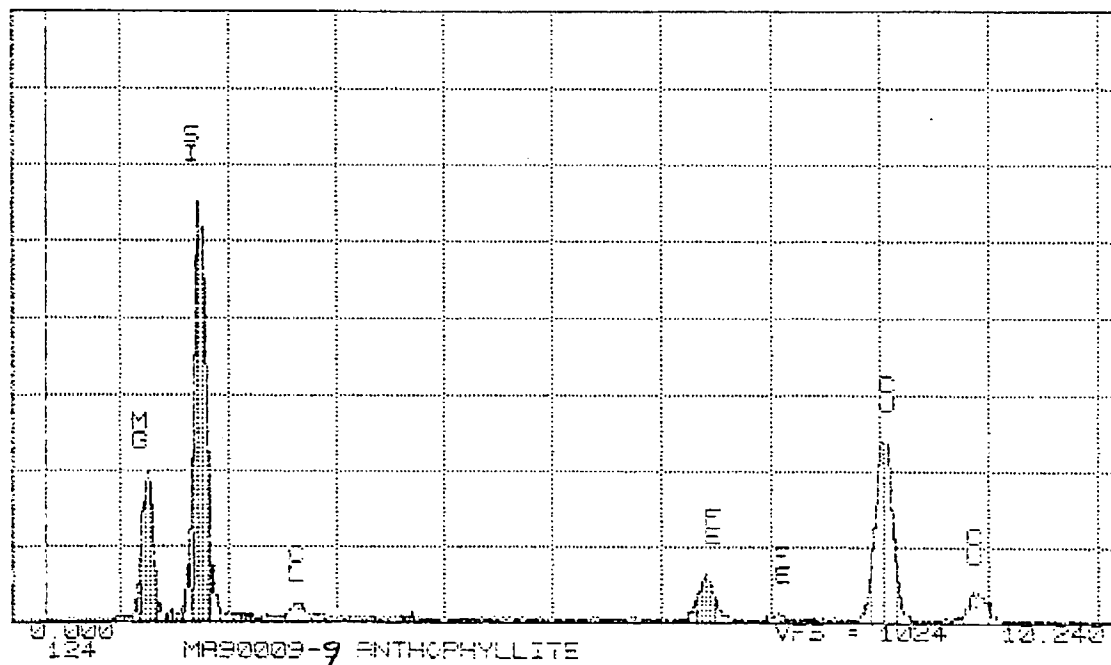
POSSIBLE IDENTIFICATION

SI KA OR RB LA?
CU KA KB
MG KA OR AS LA?
FE KA KB
CL KA

PEAK LISTING

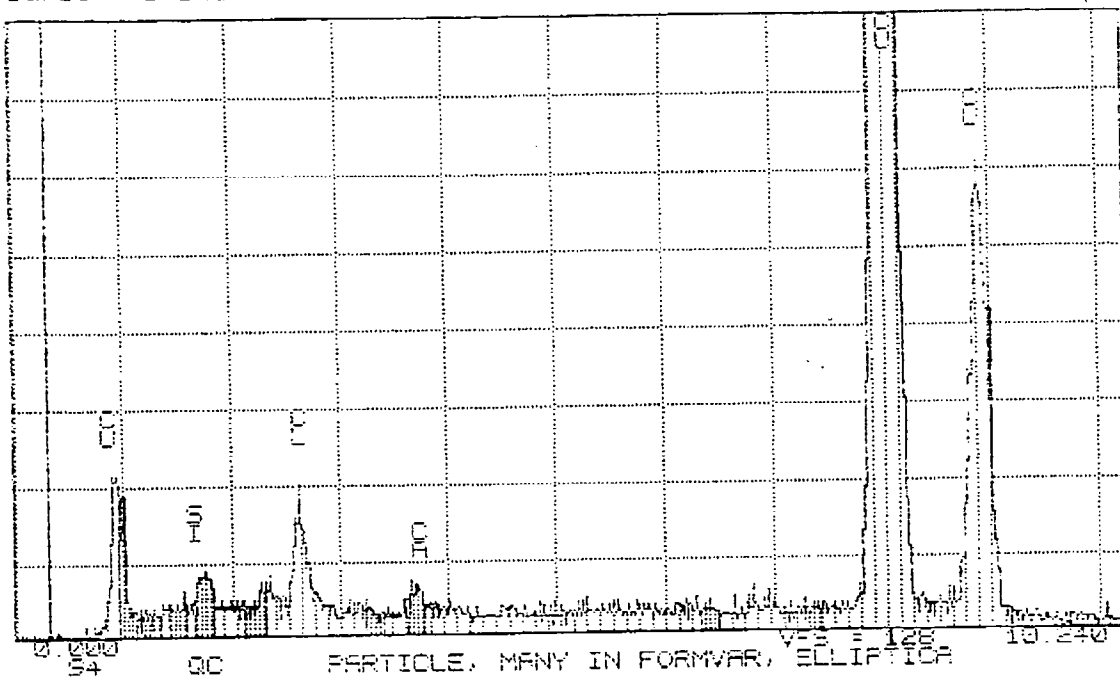
	ENERGY	AREA	EL. AND LINE
1	1.254	3416	MG KA OR AS LA?
2	1.739	10078	SI KA OR RB LA?
3	2.627	320	CL KA
4	6.400	1153	FE KA
5	7.057	188	FE KB
6	8.037	5079	CU KA
7	8.894	774	CU KB

McDermott Environmental Services Inc. MON 19-NOV-90 12:13
Cursor: 2.300keV = 0 ROI (SiKa) 1.670: 1.812=7518



J&J-0007798

McDermott Environmental Services Inc. MON 19-NOV-90 09:09
Cursor: 2.300KeV = 0 201 (SiK α) 1.670: 1.812=171



J&J-0007799

QUALITATIVE ELEMENT IDENTIFICATION

SAMPLE ID: MAS0009-1

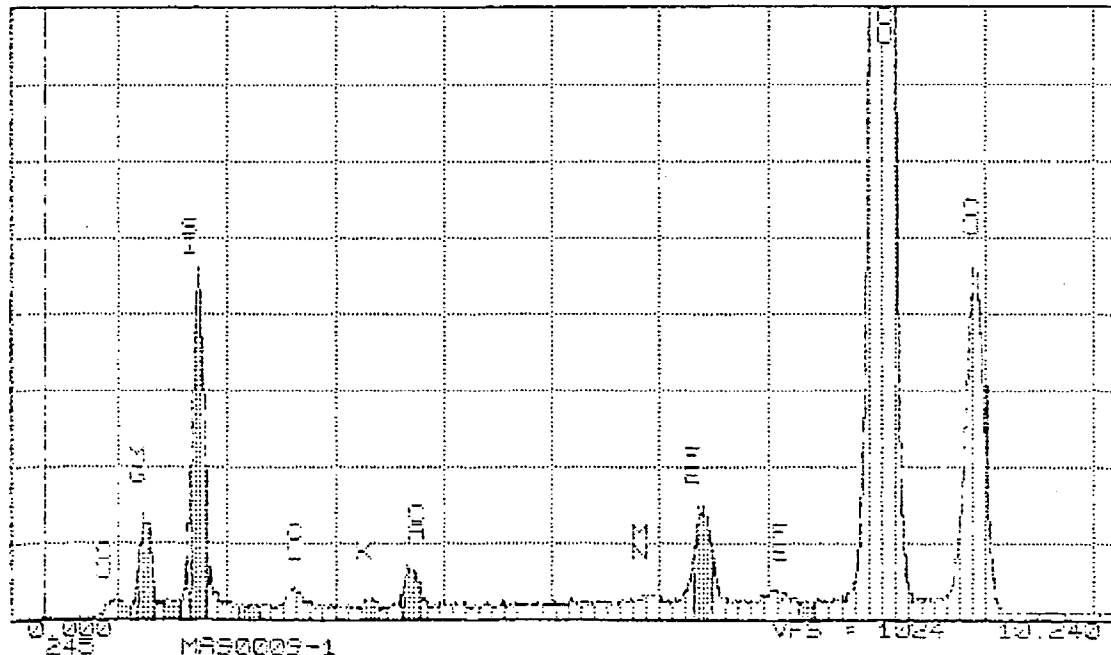
POSSIBLE IDENTIFICATION

CU KA KB LA
SI KA OR RS LA?
FE KA KB
MG KA OR AS LA?
CA KA
CL KA
MN KA
K KA OR IN LA?

PEAK LISTING

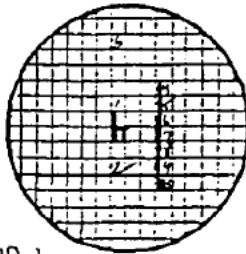
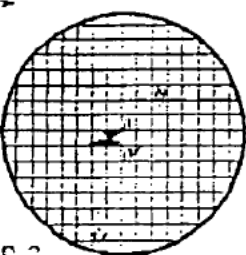
	ENERGY	AREA	EL. AND LINE
1	0.941	261	CU LA
2	1.255	2260	MG KA OR AS LA?
3	1.739	8078	SI KA OR RS LA?
4	2.615	474	CL KA
5	3.317	217	K KA OR IN LA?
6	3.696	1009	CA KA
7	5.907	236	MN KA
8	6.396	2560	FE KA
9	7.042	329	FE KB
10	8.038	64354	CU KA
11	8.893	9058	CU KB

McDermott Environmental Services Inc. MON 19-NOV-20 11:56
Cursor: 0.300keV = 0 ROI (SiKa) 1.670: 1.810=6239



J&J-0007800

EPA LEVEL II TEM ANALYSIS

ME # <u>90009-2</u> McCrone ID# _____		
PROJECT <u>CYPHUS WINDSOR</u>		
CLIENT ID <u>CWM 90-29</u>		
CLIENT COMMENTS _____		
VOLUME/AREA SAMPLED _____	DATE ANALYZED <u>11/20/90</u>	GRID 1
FILTER AREA (mm ²) <u>7.07</u>	PRIORITY	
AVG GRID SQ AREA (SGum) _____	RUSH <input type="checkbox"/>	GRID 2
ANALYST <u>RL</u>	REGULAR <input checked="" type="checkbox"/>	
CAL MAG <u>2,520 - 5,400 X</u>	LOADING	GRID MAPS
# SQUARES COUNTED <u>20</u>	LIGHT <input type="checkbox"/>	
TOTAL STRUCTURES COUNTED _____	MEDIUM <input checked="" type="checkbox"/>	<input type="checkbox"/> EPA II AIR <input type="checkbox"/> DUST (BY AREA) cm ² <input type="checkbox"/> DUST (BY WT) mg <input type="checkbox"/> WATER <input checked="" type="checkbox"/> TALC <input type="checkbox"/> LUNG TISSUE <input type="checkbox"/> OTHER
DATA ENTRY BY _____	HEAVY <input type="checkbox"/>	
DISC # _____	PLATE # _____	
NOTES <u>Amberite</u>		
Scope <u>400T</u> Acc. Volt <u>20</u> kV		

OBS	G/S	STRUCT	TYPE	LENGTH	WIDTH	# FIBERS	REP LENGTH	REP WIDTH	SAED EDS	NOTES
51										
52										
53										
54										
55										
56										
57										
58										
59										
510										
511										
512										
513										
514										
515										
516										
517										
518										
519										

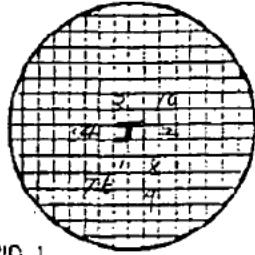
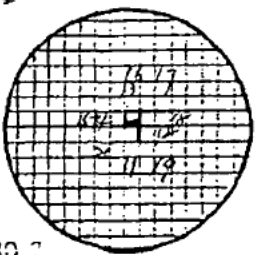
20,520
5,400
2,520

McCrone Environmental Services, Inc.

J&J-0007801

JNJMX68_000012858

EPA LEVEL II TEM ANALYSIS

ME # <u>90009-3</u> McCrone ID# _____		
PROJECT _____		
CLIENT ID <u>Cum 90-30</u>		
CLIENT COMMENTS _____		
VOLUME/AREA SAMPLED _____	DATE ANALYZED <u>11/19/90</u>	GRID 1
FILTER AREA (mm ²) _____	PRIORITY _____	SAMPLE TYPE <input type="checkbox"/> EPA II AIR <input type="checkbox"/> DUST (BY AREA) <u>cm²</u> <input type="checkbox"/> DUST (BY WT) <u>mg</u> <input type="checkbox"/> WATER <input checked="" type="checkbox"/> TALC <input type="checkbox"/> LUNG TISSUE <input type="checkbox"/> OTHER
AVG GRID SQ AREA (SQum) _____	LOADING _____	
ANALYST <u>JH</u>	LIGHT <input type="checkbox"/>	GRID 2 GRID MAPS
CAL MAG <u>19,440x</u>	MEDIUM <input checked="" type="checkbox"/>	
# SQUARES COUNTED <u>5,962x</u>	HEAVY <input type="checkbox"/>	
TOTAL STRUCTURES COUNTED <u>1</u>	PLATE # <u>14</u>	
ED1 _____	ED2 _____	
IMAGE _____		
DATA ENTRY BY _____	NOTES _____	
DISC # _____	Scope <u>1200EX</u> Acc. Volt <u>120</u> kV	

OBS	G/S	STRUCT	TYPE	LENGTH	WIDTH	FIBERS	#	REP	REP	SAED	EDS	NOTES
5151												
52												
53	F	C		1.0	0.15							20,000x
54												
55												
56												
57												6,000x
58												
59												
510												
511												
512												20,000x
513												
514												
515												
516												6,000x
517												
518												
519												
520												

McCrone Environmental Services, Inc.

J&J-0007802

JNJMX68_000012859

QUALITATIVE ELEMENT IDENTIFICATION

SAMPLE ID:90009-3 CHRYSOTILE FIBER

POSSIBLE IDENTIFICATION

CU KA KB

SI KA OR SR LA?

PEAK LISTING

	ENERGY	AREA	EL. AND LINE
1	1.750	130	SI KA OR SR LA?
2	8.053	12306	CU KA
3	8.921	1756	CU KB

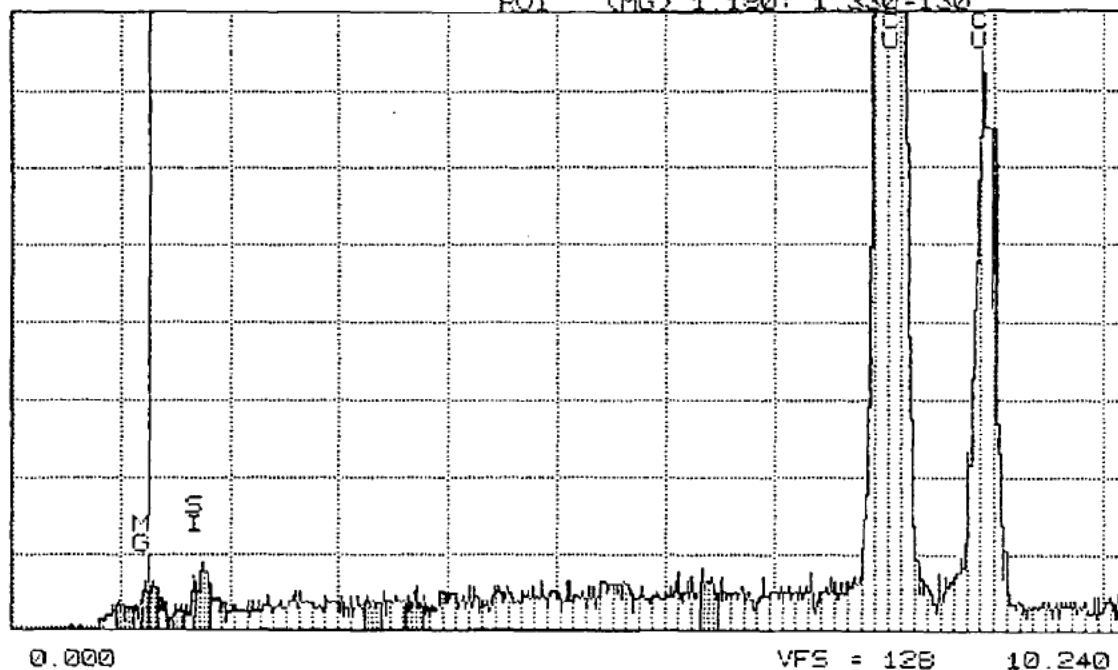
McCRONE ENVIRONMENTAL - JEOL 1200EX

MON 19-NOV-90 12:14

Cursor: 1.270KeV = 10

ROI (SI) 1.670: 1.810=154

ROI (MG) 1.180: 1.330=130



0.000

VFS = 128

10.240

58

90009-3

CHRYSOTILE FIBER

J&J-0007803

Exhibit 179



DATE: November 23, 1993

TO: W. Ashton, D. Jones

FROM: R. Denton

SUBJECT: TRIP REPORT
TALC VALIDATION TEAM MEETING - NOVEMBER 16, 1993
WINDSOR, VERMONT

TUESDAY MORNING MEETING HIGHLIGHTS:

- Flocculant was removed from the process as of 9/28/93 (i.e., just subsequent to farmhouse meeting).
- Luzenac will return to the exclusive use of "conventional" (i.e., horizontal) flotation cells.
- Luzenac has begun investigating possible alternative methods of particle size analysis (e.g., a "dry" coulter counter, etc.), but will continue to utilize the Micromeritics Corporation's "sedigraph" instrument. They have accumulated a large body of data on their talc with this device, and it is one of the most generally accepted methods for mineral particle size analysis in the 0.5 to 50 micron size range. It is also an accepted technique within the talc and mica industries. We expressed concern that the sedigraph, which analyzes samples as an aqueous dispersion, may not give data reflecting the respirable particle distribution. We also brought up the possibility of using an aerodynamic technique (e.g., Aerosizer).
- Luzenac has produced "high, loose bulk density" talc powder by minimal passage of material through the air classifier, thereby increasing the loose bulk density from 25.5 to approx. 27.0 lbs/cu ft..
- Luzenac is placing considerable emphasis on our acceptance of the V-96 special material (< 3.0% acid solubles). We have promised to continue reviewing the data, but expressed great caution in any hasty judgement as to the acceptability of the V-96 grade.
- Randy Corder gave a brief review of the effort to reduce microbial contamination of the talc. Prior to 1986, he mentioned that a large number of talc shipments were rejected due to contamination (spec. is ≤ 100 c.f.u.'s/gram and no harmfuls in 0.1 gram). After chlorination of the dewatering tank was begun (1986), there have been no rejections based on microbial content. However, due to technical problems with the chlorination (i.e., pH control, destruction of equipment due to corrosive HCl vapor, etc.) there continues to be emphasis on the acceptance of a brominating agent for microbial control. However Luzenac will keep the process as it currently is being run.

-2-

- In order to create a "benchmark" talc for our characterization and specification work, we agreed that there will be a "moratorium" on any further process changes, to avoid chasing a "moving target" on particle size, odor changes, density, etc..

Here is a summary of major ore reduction/purification ("front-end") processing changes over the past 16 years.

Pre-1976

Crusher----Roller Mill---Delaminator----Flotation*-----Dewatering-----Finishing

1976-1991

Crusher----Roller Mill---Shear Disc-----Flotation*-----Dewatering-----Finishing

1991-1993

Crusher----Roller Mill---Shear Disc-----Flotation-----Dewatering-----Vertical Mill-----Fin.

1993 to present

Crusher----Roller Mill---Shear Disc---Flotation*---Dewatering-----Air Classifier Mill---Fin.

Planned Changes (1994 Onward)

Crusher----Roller Mill-----Flotation*---Dewatering-----Air Classifier Mill---Fin.

(*-indicates use of "conventional" flotation cells.)

- We will be provided with samples of the processing stream from immediately before and after the shear disc. Johnson & Johnson (Bob Denton) will analyze these samples for any changes in morphology, surface area, surface energy, and especially delamination or edge rounding. Until this analysis is carried out and the results evaluated, the shear disc will not be removed from the process stream.

PLANT AND MINE TOUR:

Ore Typology:

- High Grade, "A" Type - Platy, opaque, schist-like fracturing, wavelly banded ore with large talc crystal plates. Often with smoky quartz inclusions occurring as lens shaped pods. Very soft, and easily delaminated (sheets can be separated with a pocket knife or fingernail). Low carbonate level (< 35 percent solubles). Usually occurs at the margins of the ore body (shear zone).
- "B" Type - Fine platy to granular, grainy fracture, semi-translucent ore. Ham material is typically light green with dark magnetite and chlorite inclusions. Contains from 45 percent to 35 percent solubles (moderate carbonate level). Makes up the majority of the commercially useful cosmetic talc ore body at the Ham mine. Harder than high grade ore.

-3-

- "C" Type - Dark colored, translucent, granular ore with a grainy fracture. Ham material is greenish gray with numerous dark inclusions of magnetite and chlorite. High carbonate level (>45 percent soluble material). Highest hardness of all commercially useful cosmetic ores due to high magnesite levels.

PLANT TOUR HIGHLIGHTS: (Conducted by M. Keener)

- Use of too much high grade ore has had a history of producing "slimes" which tended to block up the filters. This was attributed to the fact that the high grade ore delaminated easily into very thin, soft talc plates which tended to yield a large amount of fines during the grinding process. Both the fines and the thin plates contributed to the clogging of the filters and production of excessive foam during flotation.
- Higher carbonate rocks ("B" and "C" type ores) were easier to crush, float, filter, and processed more efficiently in general. Thus, quantities of the "B" and "C" type ore were blended into the high grade material even when Hammondsville was in operation, especially after the advent of continuous mining techniques. However, the exact percentages used in this blending at Hammondsville are currently unknown.
- The Ham production has consisted of primarily "B" grade ore, although as much as 10 to 15 percent of the "A" type ore continues to be mined there. The quantities of "A" ore incorporated into the grind could be even higher, but this facies often contains an unacceptable level of arsenides at this locality.
- All column flotation tanks were removed from process in late 1992. Column flotation was never used exclusively as the material produced by this technique tended to be inconsistent in quality.

MINE TOUR HIGHLIGHTS: (Conducted by Lance Meade)

- Polished thin sections are prepared as part of the prospecting routine to assess crystallinity and mineral types in the bench extensions.
- Hammondsville Mine (open pit/underground - Reading, Vermont) is at the north end of the Chester Dome structural zone. R. Denton collected a sample of a high grade (type A) ore. Lance explained that the underground mining operation was probably* more selective than the current surface mining techniques, and utilized a mixture of primarily high grade and "B" type ore.

*(Note The specifics of the mining operation at Hammondsville are uncertain, as most of the pre Luzenac records were destroyed by the mine management staff just prior to the J&J divestiture and the Cyprus purchase. However, several former Hammondsville miners are still employed at the Ham mine, and they provided us with useful information as to the nature of the underground works.)

-4-

- Ham mine (Open pit- Windham, Vermont) is on the western flank of the Chester Dome. Although the ore body exhibits a steeper dip, the basic geological setting is similar to Hammondsville. The ore bodies at both localities are theorized to have originated as serpentinites which were altered by acidic aqueous intrusions to magnesite (magnesium carbonate). Then, the magnesite was partially altered to talc by the intrusion of water-containing dissolved silica into a process known as "steatization". This incomplete steatization gave rise to a biphasic rock containing both talc and magnesite, the so-called "Talc Carbonate".
- The country rock in both locations varies from a phyllosilicate schist (hanging wall) to a garnetiferous gneiss (footwall), with the ore body lying in between. There is an adjacent deposit of serpentine, grading into the magnesite facies, which has been steatized outwards forming the commercially usable talc. At both locations the flaky high grade ore (A type) is a border deposit lying in the shear zones, especially near the contact with the schist (although there are intraformational shear zones as well).

c: **Skillman:**

R. Gallagher
A. Kulkarni
E. Lukenbach
V. McCluskey
J. Molnar
K. Scisorek

Royston:

R. Corder
D.Dye
J. Flaska
M. Roser

JNJ000240739

Metadata

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Confidentiality	Y	ORIGINAL
Custodian	Legacy 1	ORIGINAL
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Exhibit 180

Johnson & Johnson

BABY PRODUCTS COMPANY

TO: File

DATE: May 10, 1985

SKILLMAN, N. J. 08558

RE: INGESTIONS AND INHALATIONS - JOHNSON'S BABY POWDER
JANUARY, 1982 - JANUARY, 1985

<u>COMPLAINT #</u>	<u>NAME</u>	<u>DATE RECEIVED</u>	<u>NATURE OF COMPLAINT</u>	<u>MEDICAL ATTENTION RECEIVED</u>	<u>CHILD OR ADULT</u>
--------------------	-------------	--------------------------	--------------------------------	---------------------------------------	---------------------------

02043	Joly	5/4/82	Inhalation	Yes	Adult
-------	------	--------	------------	-----	-------

PJM:mmm

cc: M. McTernan

N. Musco

B. Semple

Pat
Patricia J. Mills

PLAINTIFF'S
TRIAL EXHIBIT
JJ 448

Exhibit 181

FROM THE DESK OF

W.H. ASHTON

Bill -

Here is a list of THLC
files from the last case.
Please call me at x 2760 to
discuss what is included on
this list.

Rebecca Farlow
Records Mgmt

Protected Document--Subject to Protective Order



JNJ 000089346

PlusBoxNo	PlusFileSeqNo	FromDate	ToDate	FileDesc1	FileDesc2	JustBoxNo
T43734076	1	10/23/1970		DUNN SIDING CALIFORNIA	PROGRESS REPORT 1 NOT COPIED	TALC001
T43734076	2	10/18/1972		OSHA REGULATION NONABESTIFORM	TREMOLITE ANTHOPHYLLITE	TALC001
T43734076	3	01/17/1984		CORRESPONDENCE TALC-ASBESTOS	ARTICLE KOHLER-ASHTON	TALC001
T43734076	4			OSHAS MAIN ARBUMENTS		TALC001
T43734076	5			OSHA DEFINITIONS ANALY METHOD	SUFFICIENT TO DISTINGUISH	TALC001
T43734076	6	06/01/1976	07/31/1976	CORR G LEE B SIMPLE TALC CARDF	MEETING	TALC001
T43734076	7	11/01/1975	01/31/1976	TALC CARDIFF MEETING		TALC001
T43734076	8	07/01/1971		COMPARISON OF VT TALC W/SPECIAL	DEAMINATION METHOD	TALC001
T43734076	9	01/01/1971		TALC CARDIFF COLORADO CHICAGO	REPORTS	TALC001
T43734076	10	02/28/1977		TALC TRACE METALS 2		TALC001
T43734076	11	05/25/1972		CHARACTERIZATION/TREMOLITE	TALC FD-14	TALC001
T43734076	12	06/02/1972		ID/PARTICLES IN TISSUES USING	DECORATION TECHNIQUE TENOVUS	TALC001
T43734076	13	01/01/1974	12/31/1975	TALC FLOTATION AIDS-WINDSOR		TALC001
T43734076	14	01/01/1974		TALC INFORMATION WORKING COPY	VOL 9 1	TALC001
T43734076	15	01/01/1983		SUMMARY OF CONTROVERSIAL	RESEARCH&PUBLICITY E FAXSTEIN	TALC001
T43734076	16			CARDIFF-REPORT EXAM OF SAMPLES	FROM VT MINE	TALC001
T43734076	17	01/01/1977	12/31/1981	TALC-ASBESTOS CYPRUS		TALC001
T43734076	18	01/01/1976	12/31/1977	TALC-ASBESTOS		TALC001
T43734076	19	04/01/1973	08/31/1973	TALC-ASBESTOS		TALC001
T43734076	20			MICROSCOPY OF TALC		TALC001
T43734076	21	09/01/1973	12/31/1973	TALC-ASBESTOS		TALC001
T43734077	1	01/01/1973		ESTIMATION/TALC DUST EXPOSURE	INFANTS	TALC002
T43734077	2	01/01/1977	12/31/1979	TALC ADVISORY BOARD		TALC002
T43734077	3	01/01/1979		TALC ACADEMY/SCIENCES STUDY	ASBESTOS&OTHER FIBROUS MATL	TALC002
T43734077	4	09/01/1973		TALC AVON		TALC002
T43734077	5	12/01/1972		TALC OTC OVER-THE-COUNTER		TALC002
T43734077	6	01/01/1978		TALC ALTERNATE SOURCES		TALC002
T43734077	7	01/01/1972		BATTELLE MEMORIAL INSTITUTE	AGREEMENTS	TALC002
T43734077	8	01/01/1975		INV-PULMONARY DISPOSITION	HAMSTERS	TALC002
T43734077	9	01/01/1975		INVESTIGATION-PULM DISP	HAMSTERS	TALC002
T43734077	10	07/01/1977	12/31/1977	TALC-CTFA		TALC002
T43734077	11	01/01/1974		TALC-CTFA		TALC002
T43734077	12	01/01/1977	03/31/1977	TALC-CTFA		TALC002
T43734077	13	09/01/1975		TALC MINERALOGY EXAM/BRITISH	TALC POWDERS	TALC002
T43734077	14	01/01/1975	08/31/1975	TALC ADVISORY GROUP		TALC002
T43734077	15	05/18/1973		TALC JOHNS-MANVILLE FDA	SUBMISSIONS	TALC002
T43734077	16	08/01/1976	12/31/1976	TALC CARDIFF MEETING		TALC002
T43734077	17	01/01/1983		QUARTERLY REPORT TALC POWDER	RESEARCH 3RD QUARTER 1983	TALC002
T43734077	18	01/01/1982		ARTICLES ON TALC LINK-CANCER		TALC002
T43734077	19	01/01/1974	12/31/1988	DOCUMENT'S CONSIDERED MOST	IMPORTANT	TALC002

Protected Document--Subject to Protective Order

JNJ 000089347

T43734077	20	01/01/1967	ANALYSIS OF TALC PRODUCTION	WINDSOR	TALC002
T43734077	21		BASIC POWDER TECHNOLOGY		TALC002
T43734077	22	01/01/1969	REPORT ON BENEFICATION OF VT	TALC CONCENTRATES	TALC002
T43734078	1	01/01/1972	CHARACTERIZATION/TREMOLITE	TALC FD-14	TALC003
T43734078	2	04/01/1977	TALC-CTFA		TALC003
T43734078	3		BABY POWDER STUDY		TALC003
T43734078	4	01/01/1973	TALC ASBESTOS		TALC003
T43734078	5	01/01/1971	HISTOLOGICAL EVAL OF TISSUE	RESPONSE TO INTRADERMAL INJECT	TALC003
T43734078	6	01/01/1976	CHARACTERIZATION OF TALC 141	USP LOT NO 11-16-17	TALC003
T43734078	7	01/01/1973	OPTICAL MICROSCOPY OF ASBESTOS	CTFA ROUND ROBIN ANAL	TALC003
T43734078	8		TALC WINDSOR MINERALS VT EXAM	SAMPLES	TALC003
T43734078	9	01/01/1971	TALC-COLORADO SCHOOL OF MINES		TALC003
T43734078	10	01/01/1975	WINDSOR TALC SAMPLES		TALC003
T43734078	11	01/01/1973	TALC-COLORADO SCHOOL OF MINES		TALC003
T43734078	12	01/01/1972	TALC-COLORADO SCHOOL OF MINES	SYNTHESIS OF TALC	TALC003
T43734078	13	05/01/1973	TALC SPECIAL STUDIES 0503		TALC003
T43734078	14	01/01/1974	TALC SPECIAL STUDIES PROJECT	503	TALC003
T43734078	15	01/01/1978	SPECIAL TALC STUDIES TRACE	METALS IN TALC	TALC003
T43734078	16		TALC-SPECIAL TALC STUDY 7008	MANNEQUIN & INFANT DUSTING	TALC003
T43734078	17	01/01/1972	TALC SUBSTITUTES		TALC003
T43734078	18	05/01/1971	TALC SPECIAL STUDIES 89-001-503	NON-RESPIRABLE	TALC003
T43734078	19	01/01/1971	TALC-DEVELOPMENT/STERILIZATION	CYCLES BULK TALC	TALC003
T43734078	20	01/01/1973	TALC-CTFA		TALC003
T43734078	21	08/01/1975	TALC CORPORATE PRESS PR	STATEMENTS	TALC003
T43734078	22	01/01/1975	TALC CORPORATE PRESS	PR STATEMENTS	TALC003
T43734078	23	01/01/1974	TALC-CTFA		TALC003
T43734078	24	07/01/1974	TALC-CTFA		TALC003
T43734078	25	01/01/1975	TALC-CTFA		TALC003
T43734079	1	01/01/1973	TALC SPECIAL STUDIES 0503		TALC004
T43734079	2	10/01/1976	TALC-CTFA		TALC004
T43734079	3	01/01/1972	TALC-CTFA		TALC004
T43734079	4	08/01/1976	TALC-CTFA		TALC004
T43734079	5	04/01/1976	TALC-CTFA		TALC004
T43734079	6	06/01/1975	CTFA ANTIPERSPIRANT TASK FORCE	MEETING	TALC004
T43734079	7	01/01/1971	TALC-CTFA		TALC004
T43734079	8	01/01/1974	MOUNT SINAI SPECIAL TALC STUDY		TALC004
T43734079	9	01/01/1973	TALC-ASBESTOS		TALC004
T43734079	10	01/01/1973	CONFERENCE ON INGESTED ASBEST	MICROBIOLOGY-DURHAM NC	TALC004
T43734079	11	01/01/1976	TALC SPECIAL STUDY MICROPHAGE	STUDY RATS 7008	TALC004
T43734079	12	01/01/1975	ALTERNATE SOURCES OF TALC	ARGONAUT TALC & OTHER	TALC004
T43734079	13	01/01/1974	TALC-CORPORATE PRESS	PR STATEMENTS	TALC004

T43734079	14	01/01/1975	12/31/1979	TALC INTERNATIONAL		TALC004
T43734079	15	01/01/1971		TALC-SPECIAL STUDIES 0503-00		TALC004
T43734079	16	09/01/1973	12/31/1973	TALC SPECIAL STUDIES 0505		TALC004
T43734079	17	01/01/1973		COLORADO SCHOOL OF MINES	MINERALOGICAL EXAMINATION	TALC004
T43734079	18	01/01/1976		TALC ARGONAUT		TALC004
T43734079	19	01/01/1969	12/31/1970	TALC-COLORADO SCHOOL OF MINES		TALC004
T43734079	20	01/01/1979		TALC SPECIAL STUDY 7006		TALC004
T43734080	1	01/01/1972	12/31/1973	TALC WINDSOR MINERALS		TALC005
T43734080	2			TALC WINDSOR MINERALS TASK	FORCE	TALC005
T43734080	3	01/01/1973		WINDSOR MINERALS SHEAR DISC	PROJ 0124 00	TALC005
T43734080	4	01/01/1977	12/31/1988	TALC WINDSOR MINERALS		TALC005
T43734080	5	01/01/1976		TALC WINDSOR MINERALS		TALC005
T43734080	6			TALC WINDSOR MINERALS	VERMONT/UNIV PERSP STUDY	TALC005
T43734080	7	01/01/1972	12/31/1975	TALC WINDSOR MINERALS MINES	EPIDERMIOLOGICAL STUDY G GREEN	TALC005
T43734080	8	01/01/1975	12/31/1977	TALC MOUNT SINAI STUDY LIASON	ENVIRONMENTAL LABS	TALC005
T43734080	9	12/01/1973		ESTIMATION OF TALC DUST	EXPOSURE ON INFANTS	TALC005
T43734080	10	01/01/1992		NTP TECH-TOXICOLOGY & CARCIN	CTFA PERINEAL EXPOSURE TO TALC	TALC005
T43734080	11	01/01/1983		STATUS REPORTS-DEFENSE OF TALC	SAFETY & PRE-1976 CHRONOLOGY	TALC005
T43734080	12	01/01/1977	12/31/1978	TALC-NEWSLETTER		TALC005
T43734080	13	01/01/1980		INTERNATIONAL 1965-1967	CHRONO ORDER	TALC005
T43734080	14	01/01/1974	12/31/1975	TALC-MICROBIAL STANDARDS		TALC005
T43734080	15	01/01/1974		TALC-MICROBIAL STATUS		TALC005
T43734080	16	01/01/1973	06/30/1973	TALC-MICROBIAL STATUS		TALC005
T43734080	17	01/01/1972		TALC-SANITIZATION THRU 1972		TALC005
T43734080	18			TALC-SPECIAL TALC STUDY-ADULT	POWDERING STUDY 7008	TALC005
T43734080	19	01/01/1978		SPECIAL TALC STUDY 1978 0503 01		TALC005
T43734080	20	01/01/1975		TALC-SPEC TALC STUDIES PROJ	503 00 MONTHLY REPORTS	TALC005
T43734081	1	01/01/1992		TALC NTP TECH REPORT INHALATN	RATS	TALC006
T43734081	2	01/01/1972		ALLAMMOORE TEXAS TALC	DISTRICT	TALC006
T43734081	3	01/01/1957		BABY POWDER MONTHLY REPORTS		TALC006
T43734081	4	01/01/1959		SPECIAL REPORT ON CANADIAN	TALC DEPOSITS-BATTELLE	TALC006
T43734081	5	01/01/1959		PROGRESS REPORT ON CONCEN	TALC ORES-BATTELLE	TALC006
T43734081	6	01/01/1960		PHASE REPORT-CONCEN OF ITALIAN	2 TALC BY FLOTATION-BATTELLE	TALC006
T43734081	7	01/01/1959		PHASE REPORT-AN INVESTIGATION	FINE TALCS-BATTELLE	TALC006
T43734081	8	01/01/1959		SUMMARY REP-ULTRASONIC	COMMUNION OF TALC-BATTELLE	TALC006
T43734081	9	01/01/1966		TOPICAL REP-CHAR OF FLOTATION	TAILINGS W WINDSOR-BATTELLE	TALC006
T43734081	10	01/01/1962		BENEFICIATED POWDER IN-USE	TEST	TALC006
T43734081	11	01/01/1972		ANALYSIS OF PARTICLES	TISSUES	TALC006
T43734081	12	01/01/1965	12/31/1967	TALC-MISC		TALC006
T43734081	13	01/01/1980		TALC-BABY POWDER IN CHRONO	1959-1967	TALC006
T43734081	14	01/01/1963		CORN STARCH STUDY		TALC006

T43734081	15		TALC-BABY PRODUCTS	ITALIAN TALC-MATHIEU	TALC006
T43734081	16		SUMMARY REP AMERICAN GROUND	SEARCH	TALC006
T43734081	17	01/01/1971	TALC SUBSTITUTES LITERATURE	DECONTAMINATION EXP PROGRAM	TALC006
T43734081	18	01/01/1975	PROCESS TALC SLURRY & WATER	BENEFICIATED TALC COPY 3	TALC006
T43734081	19	01/01/1970	BATCH PROD OF GRANTHAM LOT 1		TALC006
T43734081	20	01/01/1980	TALC IN CHRONO ORDER 1964-67		TALC006
T43734081	21	01/01/1980	TALC-MISC IN CHRONO ORDER	1965-1972	TALC006
T43734081	22	01/01/1980	TALC-MISC IN CHRONO ORDER	1965-67-68	TALC006
T43734081	23	01/01/1982	TALC-AIHA AMERICAN INDUSTRIAL	HYGIENE ASSOC	TALC006
T43734081	24	01/01/1982	PROSPECTIVE EVAL PULMONARY	WINDSOR TALC WORKR-BAYLOR UNIV	TALC006
T43734082	1	01/01/1980	TALC-MISC IN CHRONO 1955-70		TALC007
T43734082	2	01/01/1980	BABY POWDER IN CHRONO 1960-66		TALC007
T43734082	3	01/01/1958	BATTELLE-PROGRESS REPORT	PHYS CONCEN OF TALC ORES	TALC007
T43734082	4	12/01/1967	ALTERNATE SOURCES OF DOMESTIC	TALC PROJ D1	TALC007
T43734082	5	01/01/1980	INTERNATIONAL IN CHRONO	1960-65-66-67	TALC007
T43734082	6	01/01/1959	BATTELLE-PROG REPORT-AN EXAM	JAIPUR INDIA TALC	TALC007
T43734082	7	01/01/1967	ANALYSIS OF TALC PROD	WINDSOR MINERALS	TALC007
T43734082	8		J&J TALC ANALYSIS-POOLEY		TALC007
T43734082	9	01/01/1973	TALC-AMERICAN STANDARD TESTING	METHODS ASTM	TALC007
T43734082	10	01/01/1971	MINERAL ANALYSIS-CO SCHOOL	MINES	TALC007
T43734082	11		EXAM OF BRITISH TALC POWDERS	DEPT OF MINERAL EXPLOR-CARDIFF	TALC007
T43734082	12	01/01/1974	TALC ANALYTICAL METHODS		TALC007
T43734082	13	01/01/1967	TALC ANALYTICAL METHODS		TALC007
T43734082	14	01/01/1978	TALC-CTFA		TALC007
T43734082	15	01/01/1969	TALC-ANALYTICAL TEST RESULTS		TALC007
T43734082	16	01/01/1973	TALC-ANALYTICAL TEST RESULTS		TALC007
T43734082	17	01/01/1977	TALC-ANALYTICAL TEST RESULTS		TALC007
T43734082	18	01/01/1976	TALC-ANALYTICAL METHODS		TALC007
T43734082	19	01/01/1958	TALC-STUDIES-BATTELLE MEMORIAL	INSTITUTE	TALC007
T43734083	1	01/01/1976	TALC SANITIZATION	MINERALS	TALC008
T43734083	2		TALC SANITIZATION WINDSOR		TALC008
T43734083	3		TALC SANITIZATION PROJ 2601 01		TALC008
T43734083	4	01/01/1973	TALC NOTES		TALC008
T43734083	5	01/01/1974	TALC SANITIZATION		TALC008
T43734083	6	01/01/1975	TALC SANITIZATION		TALC008
T43734083	7		TALC SANITIZATION PROJ 2008 04		TALC008
T43734083	8	05/01/1975	TALC SANITIZATION		TALC008
T43734083	9	12/01/1971	TALC-KLIGMAN REPORT		TALC008
T43734083	10	01/01/1976	WINDSOR MINERALS		TALC008
T43734083	11	01/01/1973	TALC SANITIZATION		TALC008
T43734083	12	01/01/1978	TALC-SAFETY		TALC008

T43734083	13	01/01/1977	TALC-SAFETY			TALC008
T43734083	14	01/01/1971	EXAM OF TALC & BABY POWDER		SAMPLES	TALC008
T43734083	15	01/01/1984	TALC & PATENT INFO			TALC008
T43734083	16	01/01/1976	TALC GENERAL CORRESPONDENCE			TALC008
T43734083	17	01/01/1974	TALC STERILIZATION			TALC008
T43734083	18	01/01/1971	LOW DENSITY HIGH LUBRICITY		PROJ 0894 00 TALC	TALC008
T43734083	19		TALC RESOURCES			TALC008
T43734083	20	01/01/1973	TALC IN AFTERSHAVE LOTION			TALC008
T43734083	21	01/01/1973	TALC RESEARCH 503 01			TALC008
T43734089	1	01/01/1983	KWANGSI TALC LONGSHENG CHINA			TALC009
T43734089	2	01/01/1977	WINDSOR MATERIALS GEOLOGY OF		TALC MINE EAST JOHNSON VRMONT	TALC009
T43734089	3	01/01/1975	TALC SAFETY BROCHURE			TALC009
T43734089	4	01/01/1976	TALC PROFESSIONAL RELATIONS		PRJ WHITE PAPER JBP	TALC009
T43734089	5	01/01/1973	TALC RESPIRABLES/FINES REMOVED			TALC009
T43734089	6	01/01/1982	TALC OVARIAN CANCER			TALC009
T43734089	7	01/01/1967	TALC ARTICLES 1979/1967/1976		1983	TALC009
T43734089	8	01/01/1977	TALC ARTICLE BOOK			TALC009
T43734089	9	01/01/1936	US RUBBER-WESTPHAL TALC SUIT		ARTICLES BUREAU OF MINES	TALC009
T43734089	10		WESTPHAL SUIT RELATED REPORTS		AND ARTICLES	TALC009
T43734089	11	01/01/1976	TALC HEALTH STUDIES BY FINE		WEGMAN SELEVAN RUBINO GAMBIL	TALC009
T43734089	12	01/01/1983	WESTFALL CHRONO 1 BOOK 1			TALC009
T43734089	13	01/01/1983	WESTFALL CHRONO 2 BOOK 2			TALC009
T43734089	14	01/01/1981	NIOSH TALC CRITERIA DOCUMENT			TALC009
T43734089	15	01/01/1980	NIOSH TALC CRITERIA DOCUMENT			TALC009
T43734089	16	01/01/1979	NIOSH TALC CRITERIA DOCUMENT			TALC009
T43734089	17	01/01/1982	TALC NATIONAL TOXICOLOGY PROG		NOMINATION OF TALC FOR TESTING	TALC009
T43734089	18	01/01/1972	TALC MANUSCRIPTS			TALC009
T43734089	19		TALC LITERATURE			TALC009
T43734088	1		WINDSOR EVIDENCE			TALC010
T43734088	2	01/01/1982	BACKGROUND INFO FOR WESTPHAL C		CASE	TALC010
T43734088	3		US RUBBER-WESTPHAL TALC SUIT		BIBLIO OF LANGER/POOLEY/SUZUKI	TALC010
T43734088	4		US RUBBER-WESTPHAL		INHALLATION STUDIES BIBLIO	TALC010
T43734088	5		GEOLOGY OF TALC MINE AT		EAST JOHNSON VERMONT	TALC010
T43734088	6		THE ORIGIN OF TALC AT JOHNSON		VERMONT	TALC010
T43734088	7	01/01/1966	MARKET ANALYSIS EMT CO		EXAM OF TALC SAMPES REPORT	TALC010
T43734088	8		SELECTED BIBLIOGRAPHY VOLS 1&2		MESOTHELIOOMA	TALC010
T43734087	1		JULY TALC SUIT			TALC012
T43734087	2	01/01/1978	TALC FDA REGULATORY			TALC012
T43734087	3	01/01/1979	TALC CTFA SUB-COMMITTEE			TALC012
T43734087	4	01/01/1983	CTFA GENERAL			TALC012
T43734087	5	01/01/1980	CTFA GENERAL			TALC012

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T43734087	6	01/01/1976	12/30/1978	TALC CTFA COSMETIC TALC SPECS		TALC012
T43734087	7			BIMONTHLY REPORTS TALC/POWDER		TALC012
T43734087	8			CONSUMER PRODUCT SAFETY COMMISS	ENVIRO PROTECTION AGENCY	TALC012
T43734087	9	01/01/1979	12/30/1980	TALC CORPORATE PRESS		TALC012
T43734087	10	01/01/1978	12/30/1978	TALC CORPORATE PRESS		TALC012
T43734087	11	01/01/1976	12/30/1977	TALC CORPORATE PRESS	PR STATEMENTS	TALC012
T43734087	12	01/01/1975	12/30/1976	TALC-ASHTON GOVT LIAISON	PR STATEMENTS	TALC012
T43734087	13	01/01/1977	12/30/1977	TALC-ASHTON GOVT LIAISON		TALC012
T43734087	14	01/01/1978	12/30/1978	TALC-ASHTON GOVT LIAISON		TALC012
T43734087	15	01/01/1979	12/30/1979	TALC-ASHTON GOVT LIAISON		TALC012
T43734087	16	01/01/1980	12/30/1983	TALC-ASHTON GOVT LIAISON		TALC012
T43734087	17	01/01/1979	12/30/1979	TALC ANALYTICAL METHODS		TALC012
T43734087	18	01/01/1978	12/30/1983	TALC ANALYTICAL TEST RESULTS	1978/1982/1983	TALC012
T43734087	19			AMBIENT RESPIRABLE DUST		TALC012
T43734087	20	01/01/1982	12/30/1983	ALTERNATE SOURCES OF TALC		TALC012
T43734087	21	01/01/1978	12/30/1981	ALTERNATE SOURCES OF TALC		TALC012
T43734087	22	01/01/1974	12/30/1977	ALTERNATE SOURCES OF TALC	OTHER	TALC012
T43734087	23	01/01/1976	12/30/1976	ALTERNATE SOURCES OF TALC	ARGONAUT TALC WINDSOR MINERALS	TALC012
T43734087	24	01/01/1984	12/30/1984	ASTM MEETING		TALC012
T43734090	1	01/01/1977	12/30/1977	TALC-INTL ENGLAND PRELIMINARY	STUDIES	TALC012
T43734090	2	01/01/1976	12/30/1976	RHYOLITE		TALC012
T43734090	3	01/01/1975	12/30/1975	TALC ASBESTOS		TALC012
T43734090	4	12/28/1972		CSMRI TALC PRELIMINARY STUDY	FEASIBILITY OF MOLECULAR SYNTH	TALC012
T43734090	5	10/18/1979		PROJ 0983 ACUTE DERMAL TOX	RABBIT STUDY	TALC012
T43734090	6	07/01/1963		REPORT ON GEOLOGIC INVESTIGATI	OF ORIENTAL & CHOONGWON TALC	TALC012
T43734090	7	09/15/1977		NBS ASBESTOS WORKSHOP		TALC012
T43734090	8	01/01/1975		REVIEW-TALC SAFETY SUBSTANTIAL	ACTIVITIES-CONTINGENCY	TALC012
T43734090	9	01/01/1978	12/30/1978	TALC WINDSOR MINERALS 2008 04		TALC012
T43734090	10	06/01/1970	01/30/1971	GRANTHAM TALC COMPREHENSIVE	REPORT	TALC012
T43734090	11	09/29/1971		PRESSMENTIN TALC PROSPECT PETIT	CREEK SKAGIT CTY WASHINGTON	TALC012
T43734090	12	12/08/1971		SIX TALCOSE PROSPECTS CSMRI	WASHINGTON STATE	TALC012
T43734090	13	03/14/1972		ALLAMORE TEXAS TALC DISTRICT	CSMRI	TALC012
T43734090	14	07/30/1959		BATELLE PROGRESS REPORT	FLOTATION OF ITALIAN 2 TALC	TALC012
T43734090	15	01/18/1972		PHOTOMICROGRAPHS 35MM SLIDES	OF TISSUE CONSULT TOX LABS	TALC012
T43734090	16	01/01/1972	12/30/1972	TISSUE SECTIONS TENOVUS LABS		TALC012
T43734090	17	08/19/1970		MAPS/CROSS-SECTIONS-REPORT ON	GEOLOGY AND ORE RESERVES	TALC012
T43734090	18	07/20/1970		CSMRLEVAL OF MONARCH MINE	SAN BERNARDINO CALIFORNIA	TALC012
T43734090	19	06/25/1975		COMPLETED REPORTS TALL		TALC012
T43734090	20	05/01/1965		EVAL OF MARKET OUTLOOK FOR	E MAGNESIA TALC COMPANY	TALC012
T43734090	21	12/30/1969		MADOC TALC COMPREHENSIVE	REPORT	TALC012
T43734090	22	11/30/1971		BIBLI OF TALC & SOAPSTONE	OCCURRENCES IN WASH STATE CSMR	TALC012

T43734090	23	04/21/1971		BATCH FLOTATION PROD OF PLATY	TALC FROM L GRANTHAM CORP ORES	TALC012
T43734090	24	11/19/1969		CSMRI-PHASE 1 EVAL OF WESTERN	TALC SOURCES	TALC012
T43734090	25	07/10/1970		CSMRI RECON STUDY TALC DEPOSIT	SOUTHERN DEATH VALLEY KINGSTON	TALC012
T43734092	1	01/01/1988	12/30/1988	TALC XRD		TALC014
T43734092	2	01/01/1987	12/30/1987	TALC XRD/TEM		TALC014
T43734092	3	01/01/1971	12/30/1979	CORNSTARCH BINDER		TALC014
T43734092	4	01/01/1983	12/30/1983	RESPIRATORY PROTECTION		TALC014
T43734092	5	01/01/1981	12/30/1981	NUISANCE DUST AIR SAMPLING		TALC014
T43734092	6	04/02/1982		MSHA STANDARDS		TALC014
T43734092	7	06/22/1973		EXAM OF J&J SHOWER TO SHOWER	FOR ABESTIFORM MINERALS MCCRON	TALC014
T43734092	8	01/01/1984	12/30/1984	JBPOWDER HISTORICAL LABEL	CHANGES 1950-78 GAMBINO SUIT	TALC014
T43734092	9	01/01/1979	12/30/1979	TALC REGULATIONS		TALC014
T43734092	10	01/01/1978	12/30/1978	INDUSTRIAL TOXICITY		TALC014
T43734092	11	08/30/1981		3M RESPIRATORS TO JIM JONES		TALC014
T43734092	12	01/01/1982	12/30/1982	MATERIAL SAFETY DATA SHEET	CORRESPONDENCE	TALC014
T43734092	13	01/01/1985	12/30/1985	OSHA HAZARD COMMUNICATION	STANDARD	TALC014
T43734093	1	06/24/1971		GRANTHAM ITALIAN AND VERMONT	TALC FINAL PRODUCTS	TALC015
T43734093	2			CARDIFF EXAM OF BRITISH TALC	DEPT OF MINERAL EXPLOITATION	TALC015
T43734093	3	10/15/1957		STUDIES OF PHYS PROPERTIES OFF	TALC MEASUREMENT COMPARISON	TALC015
T43734093	4	10/01/1972		INTL AGENCY RESEARCH ON	CANCER MEETING ON ASBESTOS	TALC015
T43734093	5	01/01/2024	12/30/1962	INVOICES	MOLNAR	TALC015
T43734093	6	01/01/1984	12/30/1989	INTERNATIONAL TALC	MOLNAR	TALC015
T43734093	7			GAMBINO V J&J FILES	MOLNAR	TALC015
T43734093	8			INTERNATIONAL TALC FILES	MOLNAR	TALC015
T43734093	9	01/01/1984	12/30/1984	ASBESTOS AND TALC	MOLNAR	TALC015
T43734093	10	10/01/1984		TALC BIWEEKLY COMPOSITES	MOLNAR	TALC015
T43734093	11			TALC PROJECT FILES	MOLNAR	TALC015
T43734094	12	01/01/1978	12/30/1978	TALC INHALATION	MOLNAR	TALC015
T43734094	1	01/01/1983	12/30/1983	OSHA HAZARD		TALC016
T43734094	2	01/01/1973	12/30/1977	TALC CORRESPONDENCE	REG AFFAIRS	TALC016
T43734094	3	02/01/1973		BIOLOGICAL EFFECTS ON ASBESTOS	REG AFFAIRS	TALC016
T43734094	4	01/01/1963	12/30/1975	TALC ALTERNATIVES	REG AFFAIRS	TALC016
T43734094	5	05/25/1972		PHYS TESTING OF TALC FD-14	REG AFFAIRS	TALC016
T43734094	6	01/01/1967	12/30/1970	TALC ASBESTOS LITERATURE COPYU	REG AFFAIRS	TALC016
T43734094	7	03/28/1972		MBP PROJECT 503 RESPIRABLE	REG AFFAIRS	TALC016
T43734094	8	04/21/1972		PHYS TESTING ALLEN CLARK RPT	DUPLICATE REG AFFAIRS	TALC016
T43734094	9	08/12/1972		EXTRA COPIES TALC ON RICE REG	REG AFFAIRS	TALC016
T43734094	10	06/02/1972		IDENT OF PART IN TISSUES USING	DECO TECHNIQUE COPY REG AFFAIR	TALC016
T43734095	1	05/25/1972		CHAR OF TREMOLITE TALC FD-14	REG AFFAIRS EXTRA COPY	TALC017
T43734095	2	11/09/1973		TALC INFORMATION NASHED	REG AFFAIRS	TALC017
T43734095	3	03/06/1972		ORGANIZATION TALL FILES	REG AFFAIRS	TALC017

T43734095	4	07/20/1971	JBP FDA SUBMISSION WORKING COPY	REG AFFAIRS	TALC017
T43734095	5	02/14/1973	TALC SAFETY LIT REVIEW SUMMARY	REG AFFAIRS	TALC017
T43734095	6	10/29/1973	ASBESTOS IN TALC METHOD FED	REG PROPOSAL REG AFFAIRS	TALC017
T43734095	7	10/29/1973	ASBESTOS TALC METH FED REG	REG AFFAIRS EXTRA COPY	TALC017
T43734095	8	01/01/1971	MASTER FILE TALC PHYS TESTING	REG AFFAIRS	TALC017
T43734095	9	11/29/1972	JBP FDA SUBM N WORKING COPY	REG AFFAIRS	TALC017
T43734095	10		TALC PHOTOS IN ENVELOPE		TALC017
T43734096	1	01/01/1977	TALC MISC 7321		TALC017
T43734096	2	01/01/1984	2581 31 THAILAND CHINESE TALC	INDUSTRIAL	TALC018
T43734096	3	08/30/1989	2573 CHINESE TALC JAPAN JKK	OSMANTHUS	TALC018
T43734096	4	05/01/1977	MCCRONE		TALC018
T43734096	5	01/01/1989	7321 JBP TALC QC		TALC018
T43734096	6	01/01/1985	2581 31 THAILAND CHINESE TALC	COSMETIC	TALC018
T43734096	7	01/01/1972	V-66 TALC EXAM FOR ASBESTOS	WEEKLY X-RAY & DTA	TALC018
T43734097	1	07/08/1971	TALC TRANSMITTALS TO FDS VOL 1		TALC018
T43734097	2	04/29/1985	TALC RESPIRABLES		TALC019
T43734097	3	01/01/1981	DR MOFENSONS ARTICLES IN	PEDIATRICS FILE COPY	TALC019
T43734097	4	01/01/1982	TALC OVARIAN CANCER		TALC019
T43734097	5	12/29/1981	TALC CORRESPONDENCE		TALC019
T43734097	6	01/01/1985	TALC BIBLIOGRAPHY HILDICK SMTH		TALC019
T43734097	7	10/30/1972	PARTICLE SIZE & INHALATION	LITERATURE	TALC019
T43734097	8	01/01/1972	TALC LITERATURE		TALC019
T43734097	9	01/01/1971	TALC LIT SUMMARY		TALC019
T43734097	10	01/01/1971	VARIOUS TALC DOCUMENTS & LIT	LOOSE	TALC019
T43734098	1		TALC REPRINTS		TALC020
T43734098	2	01/01/1974	TALC PAPERS		TALC020
T43734098	3	01/01/1973	TALC SAFETY RELEASE	THE MEDICAL PROFESSIONAL	TALC020
T43734098	4	01/01/1976	TALC LITERATURE		TALC020
T43734098	5	01/01/1972	JBP FORMULA 409 FACTBOOK	SUPPLEMENT	TALC020
T43734098	6	07/01/1974	VARIOUS LITERATURE LOOSE DOCS		TALC020
T43734098	7		ASBESTOS AND HEALTH INFO FILE		TALC020
T43734098	8	01/01/1975	TALC ASBESTOS REPORTS		TALC020
T43734098	9	01/01/1973	TALC ALTERNATIVES		TALC020
T43734098	10	01/01/1971	HEW STUDIES ASBESTOS MASTER	FILE	TALC020
T43734098	11	01/01/1971	LIST MASTER FILE REPORTS		TALC020
T43734098	12	01/01/1972	SURVEY OF PAPERS ON TALC	POUDRAGE	TALC020
T43734098	13	06/18/1974	GENERAL INFORMATION		TALC020
T43734099	1	01/01/1978	J&J PLANTS TALC DUST		TALC021
T43734099	2	01/01/1974	SAFETY WHITE PAPER		TALC021
T43734099	3	01/01/1973	TALC ASBESTOS LITERATURE		TALC021
T43734099	4	01/01/1972			TALC021

T43734099	5	10/27/1980		ETHYLENE OXIDE		TALC021
T43734099	6	09/02/1983		NJ RIGHT TO KNOW FILE		TALC021
T43734099	7	01/01/1978	12/30/1978	TOXIC SUBSTANCES		TALC021
T43734099	8	01/01/1978	12/30/1980	OSHA FILES NIOSH 5		TALC021
T43734099	9	01/01/1983	12/30/1984	NJ RIGHT TO KNOW FILE		TALC021
T43734099	10	01/17/1978		ACRYLONITRILE FEDERAL REGISTER		TALC021
T43734099	11	01/01/1971	12/30/1974	PRESS RELEASE		TALC021
T43734099	12	01/01/1973	12/30/1973	LITERATURE TALC		TALC021
T43734099	13	01/01/1968	12/30/1971	LITERATURE ASBESTOS MASTER	FILE NASMED	TALC021
T43734099	14	01/01/1969	12/30/1969	LIT ASBESTOS		TALC021
T43734099	15	01/01/1949	12/30/1970	LIT TALC MASTER FILE	LIT REFERENCES TALC ASBESTOS	TALC021
T43734100	1	01/01/1972	12/30/1974	SEMINARS LYONS/DURHAM/MONTREAL		TALC022
T43734100	2	08/27/1973	09/20/1973	CONSUMENTENBOND HOLLAND	DUTCH CONSUMER GROUP	TALC022
T43734100	3	06/01/1973	09/26/1975	TALC STRATEGY AND STRATUS	BOOK 2	TALC022
T43734100	4	01/01/1973	12/30/1973	KENNEDY HEARINGS		TALC022
T43734100	5	05/08/1973		FDA COMMUNICATIONS		TALC022
T43734100	6	01/01/1973	12/30/1973	CONSUMER GROUPS		TALC022
T43734100	7	01/01/1974	12/30/1974	ILLINOIS EPA & WINDSOR MINERAL		TALC022
T43734100	8	01/01/1971	12/30/1971	ROMER NYC DEPT OF AIR RESOURCE		TALC022
T43734100	9	01/01/1975	12/30/1975	POOLEY LETTER TO LEE		TALC022
T43734100	10	01/01/1971	12/30/1971	TALC FILE CSMRI CORRESPONDENCE		TALC022
T43734100	11	01/01/1971	12/30/1971	J&J ENGLAND CORRESP TALC		TALC022
T43734100	12	01/01/1973	12/30/1973	MCCRONE ASSOCIATES CORRESP		TALC022
T43734100	13	01/01/1974	12/30/1974	NIOSH REPORT ON TALCS		TALC022
T43734100	14	07/30/1972		KRETCHNER CORRESP		TALC022
T43734100	15	01/01/1971	12/30/1971	SELIKOFF LANGER CORRESP		TALC022
T43731799	1	10/31/1968	06/28/1971	PHYSICAL TESTING VARIOUS FILES	BOOK 1	TALC023
T43731799	2	01/01/1971	12/31/1972	PHYSICAL CHARACTERISTICS	VARIOUS TALCS BOOK 2	TALC023
T43731799	3	01/01/1971	12/31/1974	PHYSICAL TESTING VARIOUS	REPORTS BOOK 3	TALC023
T43731799	4			TREMOLITE-TALC FD-14	PHYSICAL TESTING EMPTY FOLDER	TALC023
T43731799	5	01/01/1972		METHODOLOGY X-RAY DIFFRACTION		TALC023
T43731799	6	01/01/1973		METHODOLOGY ASBESTOS		TALC023
T43731799	7	01/01/1971		J&J ENGLAND STRATEGY-PHYS	TESTING	TALC023
T43731799	8	01/01/1974		PHYS TESTING OVERSEAS CO	SAMPLES INTL	TALC023
T43731799	9	01/01/1972	12/31/1973	RT VANDERBILT CO		TALC023
T43731799	10	07/09/1975		COSMETIC TALC-CTFA PRESENTATION	TO DTC ANTIPERSPIRANT PANEL	TALC023
T43731800	1	01/01/1973	12/31/1974	CLINICAL DUSTING & INHALATION	REPORTS AND CORRESPONDENCE	TALC024
T43731800	2	01/01/1971	12/31/1973	TALC CORRESPONDENCE	CLINICAL INFO	TALC024
T43731800	3	01/01/1974		TENOVOUS INSTITUTE		TALC024
T43731800	4	01/01/1971	12/31/1972	MRC-TIMBRELL TALC ASBESTOS		TALC024
T43731800	5			ANIMAL VARIOUS-EMPTY FOLDER		TALC024

T43731800	6		ANIMAL-BATELLE INSTITUTE			CORRESPONDENCE-EMPTY FOLDER	TALC024
T43731800	7	01/01/1971	WE SMITH FAIRLEIGH-DICKINSON	12/31/1974		CORRESPONDENCE	TALC024
T43731800	8	01/01/1971	TALC CORRESPONDENCE ANIMAL	12/31/1972		STUDIES	TALC024
T43731800	9	01/01/1972	FINDINGS ON J&J PRODUCTS-LEWIN			TALC/ASBESTOS	TALC024
T43731800	10	01/01/1965	ETHYLENE OXIDE SAFETY SUMMARY	12/31/1969			TALC024
T43731800	11	01/01/1969	JOHNS-MANVILLE	12/31/1974			TALC024
T43731800	12	01/01/1973	PFIZER INC				TALC024
T43731794	1	01/01/1972	FDA PROPOSED METHOD & RELATED	12/31/1974		CORRESPONDENCE REGULATIONS	TALC025
T43731794	2	01/01/1972	S LEWIN REPORTS	12/31/1974			TALC025
T43731794	3		TALC-LISTING/FDA SUBMISSIONS				TALC025
T43731794	4	01/01/1972	NIOSH STANDARD5 ASBESTOS			EXPOSURE	TALC025
T43731794	5	01/01/1971	TALC STRATEGY AND STATUS BOOK1	12/31/1973			TALC025
T43731794	6	01/01/1973	TALC INFORMATION VOL1	12/31/1974			TALC025
T43731794	7	06/01/1975	FINAL REPORT-INVGN/EFFECTS			INHALED BABY POWDER-HAMSTERS	TALC025
T43731720	1	04/10/1991	ORTHO VS KORFF	10/02/1992			TALC026
T43731720	2	09/24/1982	KLIGMAN PATENTS	01/08/1986			TALC026
T43731720	3	07/29/1986	KLIGMAN PATENTS	03/27/1991			TALC026
T43731720	4	08/16/1982	KLIGMAN PATENTS	04/05/1991			TALC026
T43731721	1		EPA TALC				TALC027
T43731721	2		ENGLEHARD AFFADAVIT			W ASHTON	TALC027
T43731721	3		CYPRUS TALC AGREEMENT				TALC027
T43731721	4	01/01/1989	CHINA TALC	12/30/1990			TALC027
T43731721	5		TALC-CANADA			WINDSOR MINERALS	TALC027
T43731721	6		CHINA TALC SPECIFICATIONS				TALC027
T43731721	7		CHINA TALC				TALC027
T43731721	8		CTFA-BATELLE			TALC MIGRATION STUDY	TALC027
T43731721	9		US BUREAU OF MINES				TALC027
T43731721	10		TALC FINES RESPIRABLE			REDUCTION MENNEN	TALC027
T43731721	11		TALC AIRBORNE RESPIRABLES				TALC027
T43731721	12		TENEVOUS-TALC				TALC027
T43731721	13		TALC-BABY POWDER CORNSTARCH				TALC027
T43731721	14		STARCH STUDIES PROJECT 7016				TALC027
T43731721	15		TALC/CANCER ISSUE				TALC027
T43731721	16	01/01/1992	NTP INHALATION STUDY	12/30/1992			TALC027
T43731721	17	01/01/1980	FUNDAMENTAL PROPERTIES OF	12/30/1980		POWDER 7006	TALC027

Protected Document--Subject to Protective Order

JNJ 000089356

Exhibit 182



mcCrone environmental services, inc.
850 PASQUINELLI DRIVE
WESTMONT, ILLINOIS 60559 • 708-887-7100

3 January 1995

Mr. John O'Shaughnessy
J & J, The Law Dept.
One J & J Plaza
New Brunswick, NJ 08933-7002

Re: Rittler v. Winn?

Subject: Windsor Minerals, Inc.
McCrone File No. ME-4055

Re: McCrone Project No. IL-2689

Dear Mr. O'Shaughnessy:

As you requested during our telephone conversation on 13 December 1994, I have completed my review of McCrone File No. ME-4055 for the additional information that you requested. The information that you requested included memos and/or correspondence from J & J that may assist in determining sample locations. A copy of the entire file has been enclosed for your review as you requested during our telephone conversation today.

If I can be of any further assistance, please do not hesitate to contact me at 708-887-7100.

Sincerely,

Laurie R. Bain
Vice President and General Manager

LRB:lrd
Enclosures

RECEIVED

JAN 5 1995

J.C. O'SHAUGHNESSY

a member of the mcCrone group

EXHIBIT
J&J-1035.1
3695-14

Exhibit 183

1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

2

- - - - -

3

VICKIE FORREST, et al.,

4

Plaintiffs,

5

vs.

Cause No.

1522-CC0419-02

6

JOHNSON & JOHNSON, et al.

7

Defendants.

8

- - - - -

9

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

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IN RE: JOHNSON & JOHNSON

MDL NO:

12

TALCUM POWDER PRODUCTS

16-2738 (FLW)(LGH)

MARKETING, SALES PRACTICES,

13

AND PRODUCTS LIABILITY

LITIGATION

14

- - - - -

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Wednesday, June 30, 2021

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18

Continued Videotaped Oral Deposition of

19

JOHN C. O'SHAUGHNESSY, taken at the Crowne Plaza

20

Princeton, 900 Scudders Mill Road, Plainsboro, New

21

Jersey, commencing at 9:35 a.m., by and before Robin

22

L. Clark, Registered Professional Reporter and

23

Notary Public in and for the State of New Jersey.

24

- - - - -

<p style="text-align: right;">Page 420</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LEVIN, PAPATONIO, RAFFERTY, PROCTOR, BUCHANAN, O'BRIEN, BARR & MOUGEY, P.A. BY: CHRISTOPHER V. TISI, ESQ. 316 South Baylen Street, Suite 600 Pensacola, Florida 32502-5996 850-435-7176 ctisi@levinlaw.com For the Plaintiff, Vickie Forrest</p> <p>7 COHEN, PLACITELLA & ROTH BY: CHRISTOPHER M. PLACITELLA, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 cplacitella@cprlaw.com For the MDL Plaintiffs</p> <p>13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP BY: ALLISON M. BROWN, ESQ. and RICHARD T. BERNARDO, ESQ. One Manhattan West New York, New York 10001-8602 212-735-3000 allison.brown@skadden.com richard.bernardo@skadden.com For the Defendant, Johnson & Johnson</p> <p>19 YETTER COLEMAN LLP BY: COLLIN J. COX, ESQ. 811 Main Street, Suite 4100 Houston, Texas 77002 713-632-8000 ccox@yettercoleman.com For the Witness</p> <p>23 ALSO PRESENT: 24 JOEL SCHNEIDER, USMJ (Retired)</p>	<p style="text-align: right;">Page 422</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 BARNES LAW GROUP, LLP BY: JOHN R. BEVIS, ESQ. 31 Atlanta Street Marietta, Georgia 30060 678-290-2240 bevis@barneslawgroup.com For the Plaintiffs</p> <p>7 ROBINSON CALCAGNIE, INC. BY: GENEVIEVE OUTLAW, ESQ. 19 Corporate Plaza Drive Newport Beach, California 92660 949-720-1288 goutlaw@robinsonfirm.com For the Plaintiffs in JCCP 4872</p> <p>12 BLASINGAME, BURCH, GARRARD & ASHLEY, PC BY: LEANNA BANKESTER PITTARD, ESQ. and SARA SCHRAMM, ESQ. 2100 Southbridge Parkway Suite 650 Birmingham, Alabama 35209 866-354-3544 lpittard@bbga.com sschramm@bbga.com For the MDL Plaintiffs</p> <p>18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP BY: CATHERINE I. MULLALEY, ESQ. 500 Boylston Street Boston, Massachusetts 02116 617-573-4851 kate.mullaley@skadden.com For the Defendant, Johnson & Johnson</p>
<p style="text-align: right;">Page 421</p> <p>1 ALSO PRESENT, continued:</p> <p>2</p> <p>3 WILLIAM GEIGERT, VIDEOGRAPHER</p> <p>4 MICHAEL KUTYS, EXHIBIT TECH</p> <p>5 REMOTE APPEARANCES:</p> <p>6</p> <p>7 BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. BY: LEIGH O'DELL, ESQ. 218 Commerce Street Montgomery, Alabama 36104 800-898-2034 leigh.odell@beasleyallen.com For the Plaintiff, Vickie Forrest</p> <p>12 ASHCRAFT & GEREL, LLP BY: MICHELLE A. PARFITT, ESQ. 1825 K Street, N.W., Suite 700 Washington, D.C. 20006 202-759-7648 mparfitt@ashcraftlaw.com For the Plaintiff, Vickie Forrest</p> <p>17 COHEN, PLACITELLA & ROTH BY: DENNIS M. GEIER, ESQ. and HARRY M. ROTH, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 dgeier@cprlaw.com hroth@cprlaw.com For the MDL Plaintiffs</p>	<p style="text-align: right;">Page 423</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 FAEGRE DRINKER BIDDLE & REATH LLP BY: SUSAN M. SHARKO, ESQ. 600 Campus Drive Florham Park, New Jersey 07932 susan.sharko@faegredrinker.com 973-549-7000 For the Defendant, Johnson & Johnson</p> <p>8 SEYFARTH SHAW LLP BY: THOMAS T. LOCKE, ESQ. 975 F Street, N.W. Washington, D.C. 20004 202-828-5376 tlocke@seyfarth.com Appearing on behalf of Personal Care Products Council</p> <p>13 TUCKER ELLIS, LLP BY: ELIZABETH J. CUMMINGS, ESQ. 100 South 4th Street St. Louis, Missouri 63102 314-571-4969 elizabeth.cummings@tuckerellis.com For the Defendants, PTI Royston, LLC and PTI Union, LLC</p> <p>18 ALSO PRESENT: 19 LEA CALLAHAN, Paralegal 20 JEN SECRIST, Paralegal 21 STEPHANIE E. MARTIN 22 ----- 23 24</p>

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2	WITNESS	PAGE	2		
3	JOHN C. O'SHAUGHNESSY		3	Exhibit 456	Report dated 11/23/83 Bates JNJ 000240739 to 40742 744
4	BY MR. PLACITELLA:	430, 879, 903	4	Exhibit 472	Photograph 900
5	BY MR. TISI:	776, 849	5	Exhibit 486	Privilege Log 715
6	BY MS. BROWN:	779, 903	6	Exhibit 488	Spreadsheet 891
7	E X H I B I T S		7	Exhibit 491	Memo dated 1/4/84 748
8	NUMBER	DESCRIPTION	8	Exhibit 525	Event Report dated 1/9/17 Bates JNJ TALC000125625 to 125632 451
9	O'Shaughnessy		9		
10	Exhibit JOS 1	McCrone Binder 1 482	10	Exhibit 1035	Letter dated 1/3/95 573
11	Exhibit JOS 1A	McCrone Binder 2 482	11	Exhibit 1039	Excerpt for J&J Privilege Log 526
12	Exhibit JOS 2A	Musco-2/Hopkins Binder 1 of 2 430	12		
13	Exhibit JOS 2B	Musco-2/Hopkins Binder 2 of 2 430	13	Exhibit 1040	Letter dated 8/14/89 563
14	Exhibit JOS 3	Additional Testing Binder 430	14	Exhibit 1042	Dismissal Order 515
15	Exhibit 4	Handwritten Document 644	15	Exhibit 1043	Deposition Of Roger N. Miller dated 4/6/95 618
16	Exhibit J&J 4	Cosmetics Document 894	16	Exhibit 1044	Deposition of Roger Miller taken 1/16/07 697
17	Exhibit TR-15	Deposition of Dr. John Hopkins dated 3/6/07 678	17		
18	Exhibit 82	Muscat Video Clip 864	18	Exhibit 1047	Affidavit of Roger Miller in Miller case 507
19	Exhibit 172	Deposition of Glenn A. Hemstock dated 1/28/83 536	19	Exhibit 1048	Letter dated 9/10/85 Bates JNJ 000064652 484
20	Exhibit 173	Deposition of Glenn A. Hemstock dated 3/16/83 538	20	Exhibit 1049	Legal Hold Letter dated 5/16/03 718
21	Exhibit 188	Stipulation of Dismissal, Letter dated 7/23/87, Affidavit of Roger Miller, and Letter dated 1/28/87 463	21	Exhibit 1051	Document Preservation Notice Bates JNJ TALC000949679 to 949681 722
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2	Exhibit 198	Letter dated 11/26/90 and Attachment Bates JNJMX__68__000012851 to 12859 738	2	Exhibit 1053	Letter dated 6/6/88 475
3	Exhibit 230	Affidavit of Dr. John Hopkins in Durham case 680	3	Exhibit 1054	Letter dated 8/27/86 468
4	Exhibit 270	Deposition of Roger N. Miller taken 6/12/91 896	4	Exhibit 1060	Transcript of John Hopkins 477
5	Exhibit 274	Letter dated 1/23/88 Bates JNJ 000024573 to 24576 633	5	Exhibit 1061	Andonian Case Witness List Bates JNJ 000065334 to 65339 497
6	Exhibit 277	Answers to Interrogatories In Krushinski Case Bates JNJ 000065001 to 650011 663	6	Exhibit D-1	Affidavit of Robert K. Denton 810
7	Exhibit 282	Roger Miller Affidavit in Andonian case Bates JNJ-WIL__0000094 to 95 499	7	Exhibit D-2	Letter dated 9/28/72 and Report Bates JNJ TALC000289268 to 359834 820
8	Exhibit 319	Letter dated 10/27/97 and Attachments 652	8	Exhibit D-3	Letter dated 3/18/02 Bates JNJ TALC00109268 to 109278 828
9	Exhibit 322	IARC Monograph 636	9	Exhibit D-4	Case Control Studies that were Published from 1992 to 1999 845
10	Exhibit 355	Letter dated 1/28/1987 Bates JNJ TALC0000387714 to 387716 729	10		
11	Exhibit 414	Spreadsheet 890	11		
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<div>Page 428</div> <div>1</div> <div>2 REDACTED PORTION OF TRANSCRIPT</div> <div>3 Page 586, Line 9 to Page 589, Line 6</div> <div>4 SEALED PORTION OF TRANSCRIPT</div> <div>5 Page 601, Line 7 to Page 614, Line 10</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>	<div>Page 430</div> <div>1 -----</div> <div>2 (Binders premarked</div> <div>3 O'Shaughnessy Exhibits JOS 2A, JOS</div> <div>4 2B, and JOS 3 for identification.)</div> <div>5 -----</div> <div>6 THE VIDEOGRAPHER: Good</div> <div>7 morning. We are now on the record.</div> <div>8 My name is Bill Geigert. I'm a</div> <div>9 videographer for Golkow Litigation</div> <div>10 Services. Today's date is June 30,</div> <div>11 2021, and the time is 9:35 a.m.</div> <div>12 This is the continuation of the</div> <div>13 deposition of John C.</div> <div>14 O'Shaughnessy. Sir, I want to</div> <div>15 remind you, you are still under</div> <div>16 oath. Counsel, please proceed.</div> <div>17 -----</div> <div>18 JOHN C. O'SHAUGHNESSY, having been</div> <div>19 duly previously sworn, was examined</div> <div>20 and testified as follows:</div> <div>21 -----</div> <div>22 BY MR. PLACITELLA:</div> <div>23 Q. Good morning,</div> <div>24 Mr. O'Shaughnessy. How are you?</div>
<div>Page 429</div> <div>1 DEPOSITION SUPPORT INDEX</div> <div>2</div> <div>3 -----</div> <div>4 Direction to Witness Not to Answer</div> <div>5 Page Line</div> <div>6 432 20</div> <div>7 522 21</div> <div>8 560 20</div> <div>9 751 14</div> <div>10 766 17</div> <div>11 778 23</div> <div>12 Request for Production of Documents</div> <div>13 Page Line</div> <div>14 NONE</div> <div>15 Question Marked</div> <div>16 Page Line</div> <div>17 NONE</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>	<div>Page 431</div> <div>1 A. Good, Mr. Placitella.</div> <div>2 Q. We've met informally.</div> <div>3 A. Yes.</div> <div>4 Q. I'm here now formally on behalf</div> <div>5 of the 30000-plus women who have cases</div> <div>6 filed who believe that their ovarian cancer</div> <div>7 is a result of their unwaning use of</div> <div>8 Johnson's Baby Powder or Shower to Shower.</div> <div>9 Do you understand that?</div> <div>10 A. I understand who you represent.</div> <div>11 Q. Okay. Now, in preparation for</div> <div>12 today's deposition or yesterday, did you</div> <div>13 review your transcript from last week?</div> <div>14 A. No.</div> <div>15 Q. Okay. I want to spend a little</div> <div>16 time just talking to you about your active</div> <div>17 involvement in the cases that you worked</div> <div>18 on. Okay?</div> <div>19 When you were working on the</div> <div>20 talc cases for Johnson & Johnson, you were</div> <div>21 aware of the evidence available to respond</div> <div>22 to requests made in litigation?</div> <div>23 A. I was --</div> <div>24 Q. Were you aware --</div>

<p style="text-align: right;">Page 432</p> <p>1 A. Of what?</p> <p>2 Q. The evidence that was available</p> <p>3 to respond to requests for evidence made in</p> <p>4 litigation?</p> <p>5 A. Like --</p> <p>6 MS. BROWN: I object as</p> <p>7 vague. I don't understand the</p> <p>8 question.</p> <p>9 THE WITNESS: Discovery</p> <p>10 requests?</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. Yes.</p> <p>13 A. Yes. I was, yeah.</p> <p>14 Q. And you took and defended</p> <p>15 depositions?</p> <p>16 A. Rarely.</p> <p>17 Q. Okay. Did you decide what</p> <p>18 evidence would be turned over in the course</p> <p>19 of litigation?</p> <p>20 MS. BROWN: I object and</p> <p>21 instruct Mr. O'Shaughnessy not to</p> <p>22 answer that. You're asking him a</p> <p>23 question about his role as counsel</p> <p>24 for Johnson & Johnson in</p>	<p style="text-align: right;">Page 434</p> <p>1 interrogatories. So if that's the</p> <p>2 question, that can be asked or what</p> <p>3 persons participated or supplied</p> <p>4 information to answer</p> <p>5 interrogatories, that is an</p> <p>6 appropriate question. Questions of</p> <p>7 that ilk are appropriate, but the</p> <p>8 particular question as phrased does</p> <p>9 ask for work product, because it</p> <p>10 asks for the ultimate</p> <p>11 decision-maker and that's a work</p> <p>12 product issue.</p> <p>13 BY MR. PLACITELLA:</p> <p>14 Q. Did you decide what evidence</p> <p>15 must preserved in the context of</p> <p>16 litigation? Did you decide? That's all</p> <p>17 I'm asking?</p> <p>18 MS. BROWN: I object as</p> <p>19 well, your Honor, for the same</p> <p>20 reasons. This is work product,</p> <p>21 decisions made by Johnson &</p> <p>22 Johnson's attorney in terms of how</p> <p>23 to defend litigation.</p> <p>24 JUDGE SCHNEIDER: I</p>
<p style="text-align: right;">Page 433</p> <p>1 determining what would be provided</p> <p>2 in litigation.</p> <p>3 MR. PLACITELLA: I'll</p> <p>4 ask for a ruling.</p> <p>5 JUDGE SCHNEIDER: I</p> <p>6 think that Plaintiffs are entitled</p> <p>7 to know who provided information in</p> <p>8 order to answer interrogatories.</p> <p>9 That is not a work product</p> <p>10 question. So I would phrase it --</p> <p>11 if it's phrased that way, I think</p> <p>12 it's an appropriate question.</p> <p>13 Let's -- can we hear the question</p> <p>14 again?</p> <p>15 - - - - -</p> <p>16 (Whereupon, the reporter read</p> <p>17 back as requested.)</p> <p>18 - - - - -</p> <p>19 JUDGE SCHNEIDER: I</p> <p>20 think that particular question does</p> <p>21 ask for work product, but it's a</p> <p>22 perfectly appropriate interrogatory</p> <p>23 to ask a company who supplied</p> <p>24 information in response to</p>	<p style="text-align: right;">Page 435</p> <p>1 think that particular question is</p> <p>2 privileged, but I think if Mr.</p> <p>3 Placitella asks who decided to</p> <p>4 preserve evidence, that is an</p> <p>5 appropriate discovery question.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. Well, who made the decision</p> <p>8 what evidence should be preserved for</p> <p>9 litigation?</p> <p>10 MS. BROWN: Vague as to</p> <p>11 litigation.</p> <p>12 THE WITNESS: A hold</p> <p>13 notice would typically be used to</p> <p>14 hold, to send to the company to</p> <p>15 instruct them to hold documents</p> <p>16 that may be relevant to the</p> <p>17 litigation and, I believe, I signed</p> <p>18 the hold notices for that. But it</p> <p>19 all depends on the point in time.</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. Okay. During the time that you</p> <p>22 worked on the talc litigation, who made the</p> <p>23 decision as to what evidence had to be</p> <p>24 preserved?</p>

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1 A. The hold notice would have been
2 issued by me.
3 Q. Okay. And the first hold
4 notice that you issued was, what, in 1997?
5 A. I don't recall.
6 Q. Okay. And you were involved in
7 verifying the accuracy of discovery
8 responses you said the other day, true?
9 A. Yes, I worked with, along with
10 outside counsel, yes.
11 Q. And you ensured that the
12 discovery responses that were provided had
13 a proper factual basis?
14 A. Along with outside counsel,
15 based on our work, and yes.
16 Q. Okay. Did you ever make
17 representation of facts to litigants or
18 courts concerning talc and its safety?
19 A. Other than what's in the file
20 documents, I'm not sure what you mean.
21 Q. Right, in file documents.
22 A. Whatever was filed was filed.
23 I don't know.
24 Q. Okay. Nancy Musco testified

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1 that you were the one who decided what
2 information would be turned over in
3 litigation. Was she wrong about that?
4 MS. BROWN: I object.
5 Misstates the evidence and lacks
6 foundation.
7 MR. PLACITELLA: All
8 right. I'm going to play you
9 her -- from her transcript. Hold
10 on.
11 - - - - -
12 (Whereupon, a video clip was played.)
13 - - - - -
14 BY MR. PLACITELLA:
15 Q. Is that accurate?
16 MS. BROWN: Same
17 objection to a selective playing of
18 Ms. Musco's testimony that
19 Mr. O'Shaughnessy has not reviewed.
20 THE WITNESS: I believe
21 the discovery was phrased that it
22 was based on the advice and
23 assistance of counsel and that was
24 true.

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1 BY MR. PLACITELLA:
2 Q. Okay. Before sworn statements
3 from Johnson & Johnson employees went out
4 in litigation, were they reviewed and
5 approved by you?
6 A. If it was my litigation,
7 generally, yes.
8 Q. And did that include talc
9 litigation?
10 A. Yes.
11 Q. Okay. And did you have
12 something known as a talc litigation guide
13 for outside counsel?
14 MS. BROWN: I object and
15 instruct not to answer. Work
16 product.
17 MR. PLACITELLA: I'm
18 just asking if it existed. I'm not
19 asking what was in it.
20 MS. BROWN: I object.
21 The existence of any materials that
22 were provided by in-house counsel
23 for J&J to outside counsel for J&J
24 in furtherance of defending

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1 litigation is work product.
2 JUDGE SCHNEIDER: Is
3 this something that some other
4 witness had identified in
5 deposition testimony?
6 MR. PLACITELLA: Not to
7 my knowledge.
8 JUDGE SCHNEIDER: Can
9 you repeat the question, please,
10 Court Reporter?
11 - - - - -
12 (Whereupon, the reporter read
13 back as requested.)
14 - - - - -
15 JUDGE SCHNEIDER: I
16 think that's plainly work product.
17 Objection sustained.
18 BY MR. PLACITELLA:
19 Q. Okay. Did Johnson & Johnson
20 corporate, that meaning you, receive
21 records of pleadings and discovery requests
22 that were made in talc litigation?
23 A. I received those requests
24 through local counsel on a case.

<p style="text-align: right;">Page 440</p> <p>1 Q. Okay. And who was in charge of 2 gathering evidence to supply answers to 3 discovery in talc litigation? 4 MS. BROWN: I object, 5 Your Honor, for the same reasons, 6 work product. 7 JUDGE SCHNEIDER: Can I 8 ask the court reporter to repeat 9 the question? 10 ----- 11 (Whereupon, the reporter read 12 back as requested.) 13 ----- 14 JUDGE SCHNEIDER: Okay. 15 Is the question who was in charge, 16 is that what it said? I think the 17 question who was in charge is 18 objectionable as work product, but 19 I don't think the question of who 20 supplied information to answer 21 interrogatories is work product. 22 That's clearly discoverable and is 23 an appropriate interrogatory that's 24 typically asked. So if the</p>	<p style="text-align: right;">Page 442</p> <p>1 talc litigation, they might have played a 2 role in that, I just don't recollect, but 3 as time went on and the litigation grew, 4 then, you know, then the legal team grew 5 and there was more responsibility 6 concerning ongoing discovery through the 7 legal team and collecting and interviewing, 8 you know, again, people at the company to 9 obtain the information. 10 Q. When evidence was turned over 11 in talc litigation, where was it stored, 12 within what Johnson & Johnson? 13 MS. BROWN: I object. 14 Work product, Your Honor. 15 JUDGE SCHNEIDER: 16 Objection overruled. That's not 17 work product. 18 THE WITNESS: Typically, 19 the documents would be collected 20 and maintained by outside counsel. 21 BY MR. PLACITELLA: 22 Q. So they would be kept with 23 outside counsel and would you at Johnson & 24 Johnson keep copies?</p>
<p style="text-align: right;">Page 441</p> <p>1 question is who supplied 2 information rather than the person 3 who was in charge, that can be 4 asked, but the question who was in 5 charge is work product. 6 BY MR. PLACITELLA: 7 Q. Okay. Can you answer Judge 8 Schneider's question? He's been around, 9 you know, on the bench, so he's a little 10 better at that than me. 11 A. When we answered discovery in 12 general, what would happen is outside 13 counsel in coordination with me would 14 interview appropriate people at the company 15 who had knowledge of the product or the 16 issues in the lawsuit. They would be 17 tasked also with collecting relevant 18 documents and assembling them for use in 19 the litigation. 20 Q. And that by name is who? 21 A. Early on, it would have been 22 Mr. Williams and the MehaffyWeber firm. It 23 also would have been to the extent if there 24 were any other firms that were handling</p>	<p style="text-align: right;">Page 443</p> <p>1 A. No, there was too many of them. 2 Q. Okay. And when there was 3 information from prior litigation, like, a 4 case was closed, a talc case, for example, 5 was closed, what was done with those files? 6 A. The Johnson & Johnson files 7 or -- 8 Q. Yes. 9 A. -- the outside counsel files? 10 Q. Both. 11 A. Johnson & Johnson had a file 12 system where the summons and complaint were 13 filed to it, so there would be a file for a 14 case name and a general file where papers 15 would be filed to that. And then they 16 would be maintained there, whatever papers 17 were filed, including the closing 18 documents. 19 Q. So, for example, if a witness 20 in a Johnson & Johnson talc case provided a 21 sworn statement that you reviewed, where 22 would that be -- where would that be saved 23 at Johnson & Johnson when the case was 24 over?</p>

<p style="text-align: right;">Page 444</p> <p>1 A. It might not have been kept at 2 Johnson & Johnson. It might have been kept 3 by outside counsel and it might not have 4 been kept at Johnson & Johnson. Johnson & 5 Johnson did not keep, generally speaking, 6 as far as I am aware, like, a mirror file 7 of what outside counsel has. 8 Q. Well, if someone made a request 9 in a case and they said give me all of the 10 prior statements on this issue that were 11 made by Johnson & Johnson employees, either 12 in terms of interrogatories or affidavits, 13 you would have to go to outside counsel and 14 get them? 15 A. I maybe would have it in a file 16 and know where it was or, yeah, we would go 17 to outside counsel for it, yes. 18 Q. And you kept track of what 19 outside counsel was in possession of, what 20 statements and what discovery responses? 21 MS. BROWN: I object 22 Your Honor, work product in terms 23 of what outside counsel had versus 24 Mr. O'Shaughnessy.</p>	<p style="text-align: right;">Page 446</p> <p>1 A. Up until about 2012, I was 2 responsible for the day to day. 3 Q. But you were involved after 4 2012. I saw you at a deposition. 5 A. Yes, I had a limited role after 6 that. 7 Q. Okay. And when documents were 8 produced in the ovarian cancer talc 9 litigation, did you go to all of the 10 outside counsel and say give me all of the 11 prior sworn statements from Johnson & 12 Johnson? 13 MS. BROWN: Objection, 14 Your Honor, work product. 15 JUDGE SCHNEIDER: Same 16 ruling, overruled, because again, 17 this is akin to document custodian 18 questions, which is an appropriate 19 area of inquiry. 20 THE WITNESS: I don't 21 recall that I did that and I don't 22 recall whether I had any 23 responsibility for discovery, I 24 don't know what stage discovery was</p>
<p style="text-align: right;">Page 445</p> <p>1 JUDGE SCHNEIDER: 2 Objection overruled. I think this 3 is akin to document custodian 4 questions which are appropriate for 5 discovery to find out the location 6 and existence of discoverable 7 documents and whether they can 8 search for and produce in discovery 9 and I think that is an appropriate 10 area of discovery. 11 THE WITNESS: I'm sorry, 12 can -- 13 MR. PLACITELLA: Can you 14 read the question back, please? 15 - - - - - 16 (Whereupon, the reporter read 17 back as requested.) 18 - - - - - 19 THE WITNESS: Not 20 really. 21 BY MR. PLACITELLA: 22 Q. So you were in charge for a 23 while at least before you retired of the 24 ovarian cancer talc litigation, right?</p>	<p style="text-align: right;">Page 447</p> <p>1 at in the ovarian cancer litigation 2 by the time I had left supervising. 3 BY MR. PLACITELLA: 4 Q. Well, who was in charge at that 5 point that made those calls? 6 A. It would have been, it would 7 have been for Johnson & Johnson, it would 8 have been Denise Houghton in conjunction, 9 again, with Gene Williams and his firm, 10 which by then might have been Shook Hardy. 11 Q. So as you sit here today, you 12 cannot testify under oath that in the 13 ovarian cancer litigation you have produced 14 all of the prior sworn statements given by 15 Johnson & Johnson employees in talc 16 litigation, correct? 17 MS. BROWN: I object as 18 vague. Are we talking about in 19 response to a particular discovery 20 request. 21 THE WITNESS: All I -- 22 MR. PLACITELLA: You can 23 answer it. 24 THE WITNESS: What I can</p>

<p style="text-align: right;">Page 448</p> <p>1 say is that when I was responsible 2 for the ovarian cancer litigation, 3 I don't know that we had too many 4 cases at that time and whatever 5 discovery we provided was 6 consistent with our obligations in 7 that particular case. 8 BY MR. PLACITELLA: 9 Q. Well, you were involved and 10 supervised literally thousands of Johnson & 11 Johnson talc cases, correct? 12 A. No, not in ovarian cancer. 13 Q. I didn't ask you about ovarian 14 cancer. You supervised literally thousands 15 of Johnson & Johnson talc cases where 16 people were alleging injury from Johnson & 17 Johnson talc? 18 A. I did supervise cases. I don't 19 know that they were in the thousands. 20 Q. Okay. Lawsuits alleging injury 21 from cosmetic talc put the company on 22 notice that there are people alleging 23 injuries associated with talc. Do you 24 agree with that?</p>	<p style="text-align: right;">Page 450</p> <p>1 notice that people were alleging injuries 2 associated with talc, true? 3 MS. BROWN: Same 4 objection. 5 THE WITNESS: Sure, to 6 the extent they sued Johnson & 7 Johnson, yes. 8 BY MR. PLACITELLA: 9 Q. And in fact, lawsuits alleging 10 injury from cosmetic talc were reportable 11 by Johnson & Johnson to the FDA in terms of 12 adverse event reports, correct? 13 A. I don't know the specific 14 requirements for the FDA. 15 Q. Okay. Can you go in your book 16 to Exhibit 525. And it's 525.758. 17 A. What volume is it in, do you 18 know? 19 Q. It should be in book two. 525, 20 I'll pull it up, it's up on the screen, 21 it's in front of you. This is an adverse 22 event report dated January 9, 2017. Do you 23 see that? 24 A. I do.</p>
<p style="text-align: right;">Page 449</p> <p>1 MS. BROWN: I object, 2 Your Honor. It's asking for a 3 legal conclusion in terms of when 4 the company was on notice. 5 JUDGE SCHNEIDER: Is 6 there a privilege objection? 7 MS. BROWN: Well, Your 8 Honor, he's not here speaking for 9 Johnson & Johnson and the question 10 is when was Johnson & Johnson on 11 notice. 12 MR. PLACITELLA: I 13 didn't know that this -- 14 MS. BROWN: It lacks 15 foundation. 16 JUDGE SCHNEIDER: How do 17 we know he can't answer? 18 MS. BROWN: It lacks 19 foundation. 20 THE WITNESS: The 21 beginning of that question was -- 22 BY MR. PLACITELLA: 23 Q. Lawsuits alleging injury from 24 cosmetic talc put Johnson & Johnson on</p>	<p style="text-align: right;">Page 451</p> <p>1 ----- 2 (Event Report dated 1/9/17 3 Bates JNJTALC000125625 to 125632 4 marked O'Shaughnessy Exhibit 525 5 for identification.) 6 ----- 7 BY MR. PLACITELLA: 8 Q. And it's for somebody who 9 brought a case for ovarian cancer related 10 to Johnson & Johnson's Baby Powder. Do you 11 see that? 12 A. Yes. 13 Q. And it says the information was 14 supplied by the Johnson & Johnson law 15 department. Do you see that? I blew it 16 up, if you look right on the screen. 17 A. I just want to make sure, is it 18 525? 19 Q. Yeah. 20 A. Got it. Got it. I'm sorry. I 21 was on the wrong one. 22 Q. Yeah, no problem. 23 A. It says these documents were 24 received by the J&J law department on</p>

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1 January 9, 2017.
2 Q. That's you, right, the law
3 department?
4 A. It's the J&J law department, I
5 was not handling the cases at that time.
6 Q. But generally speaking, you
7 knew that was the procedure, right, that a
8 complaint came in and you sent it to an
9 independent analyst hired by Johnson &
10 Johnson to assess causality for purposes of
11 reporting to the FDA.
12 A. I don't know that.
13 MS. BROWN: Objection,
14 foundation.
15 BY MR. PLACITELLA:
16 Q. You don't know that?
17 A. No.
18 Q. Okay. Do you see, go to the
19 next page. If you see on the bottom, it
20 says case medically confirmed. And it says
21 reportable to FDA, yes. Do you see that?
22 A. Yeah.
23 Q. Okay. And your independent
24 consultant actually evaluated this case and

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1 determined that casualty was actually
2 possible, correct?
3 MS. BROWN: Objection.
4 Misstates the document.
5 THE WITNESS: I'm --
6 this is a document -- you know
7 what, I don't recognize what the
8 document is. It looks like a
9 regulatory document and they had
10 their own procedures about what
11 they had to do when they received
12 complaints. So you would have to
13 ask someone in the regulatory
14 function about this.
15 BY MR. PLACITELLA:
16 Q. Okay. So you have no knowledge
17 of Johnson & Johnson having the complaints
18 that were filed that you were in charge of
19 making an independent evaluation about
20 whether causation was possible?
21 MS. BROWN: Objection.
22 Misstates the document and the
23 evidence and lacks foundation.
24 THE WITNESS: At this

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1 time, I was not responsible for
2 processing complaints, but I know
3 that the Johnson & Johnson law
4 department had complaints and they
5 were appropriately reported by the
6 company to wherever it had to be
7 reported. How the company handled
8 that and what consultants they
9 used, I don't have any knowledge of
10 that.
11 BY MR. PLACITELLA:
12 Q. Well, in 2012 when you were
13 sued in an ovarian cancer case, you
14 understood that that complaint was going to
15 be used as a basis for independent
16 evaluation and submitted to the FDA,
17 correct?
18 MS. BROWN: Object,
19 foundation.
20 THE WITNESS: The
21 company had their procedures about
22 what to do with complaints and I
23 assume they followed them. I
24 didn't have any insight into that.

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1 BY MR. PLACITELLA:
2 Q. So they kept that from you?
3 A. I didn't say that --
4 Q. (MS. BROWN) Objection,
5 argumentative.
6 BY MR. PLACITELLA:
7 Q. So you do know?
8 MS. BROWN: Wait, wait,
9 wait. Hold on. Hold on.
10 THE WITNESS: They
11 didn't keep anything from me.
12 That's not a proper way to put it.
13 I said I didn't know what they did,
14 they had their own procedures.
15 BY MR. PLACITELLA:
16 Q. Okay. They shared, they shared
17 these reports with you as they came in?
18 MS. BROWN: Objection.
19 Misstates the testimony.
20 THE WITNESS: I didn't
21 see all documents from the company,
22 no.
23 BY MR. PLACITELLA:
24 Q. Okay. Now, information

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1 available to answer questions in one case
2 would be relevant to answer similar
3 questions in other cases, do you agree with
4 that?

5 MS. BROWN: Objection,
6 Your Honor, work product.

7 JUDGE SCHNEIDER: I
8 think that's a general question not
9 asking about specific case
10 preparation and litigation, so
11 objection overruled.

12 THE WITNESS: I do
13 believe, yes, it is a general
14 question. I can't answer it in
15 that form. Each case is treated
16 individually.

17 BY MR. PLACITELLA:
18 Q. So, for example, when you had
19 your deposition taken last week by
20 Mr. Block, you don't think that's relevant
21 to what you might have to talk about here
22 today?

23 A. That's not for me to decide.
24 That's for the judge to decide.

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1 Q. Okay. But you understood as a
2 lawyer in charge of the litigation that if
3 somebody provided sworn testimony under
4 oath, that might be evidence in another
5 case with similar allegations, correct?

6 MS. BROWN: Objection,
7 vague. Doesn't make sense.

8 THE WITNESS: I can't
9 speculate as to where it may be
10 used or where it may --

11 BY MR. PLACITELLA:
12 Q. I'm not asking you to
13 speculate. I'm asking --

14 A. Well, then, I don't know.

15 Q. You don't know. Okay. That's
16 fine. Last week you testified that in
17 cases that you supervised, Johnson &
18 Johnson swore under oath that Johnson's
19 Baby Powder's never contained asbestos in
20 any form or tremolite. Do you recall that?

21 A. Yes, I do.

22 Q. Okay. And you indicated that
23 in making that statement that you relied
24 upon Dr. Hopkins, true?

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1 A. I think I stated we relied on
2 all the people we spoke to at the company
3 and he would be one of them.

4 Q. Well, Mr. Block asked you for
5 specific names and you gave him Dr.
6 Hopkins, Mr. Ashton, and Mr. Chudkowski,
7 correct?

8 A. Those are the names I could
9 remember, but our lawyers when they went
10 and did their research to respond to this
11 or to prepare themselves for litigation
12 would have talked to way more than those
13 people.

14 Q. That's fine. I'm just asking
15 you. You recall that Dr. Hopkins,
16 Mr. Ashton, and Chudkowski were at least
17 some of the people that you relied upon,
18 correct?

19 A. Yes.

20 Q. Okay. What about Roger Miller?

21 A. Him too.

22 Q. What about Bruce Semple?

23 A. I don't recall, I know Bruce,
24 Dr. Semple, and we certainly interviewed

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1 him. I don't recall when he was there,
2 because I know he left the company, so I'm
3 not sure.

4 Q. And wasn't he the medical
5 director at Johnson & Johnson?

6 A. He was at one point, I think,
7 yeah.

8 Q. Now, I wouldn't ordinarily ask
9 you this question, I don't want to insult
10 you, but at the end of the last deposition,
11 Ms. Brown asked you this question, so I
12 want to get it up front so I'm not accused
13 of being unfair, because you accused
14 Mr. Block of being unfair. Do you remember
15 that?

16 MS. BROWN: Object to
17 the argumentative nature of these
18 questions.

19 BY MR. PLACITELLA:
20 Q. Do you remember accusing
21 Mr. Block of being unfair --

22 A. I thought the inference was
23 unfair.

24 Q. Okay. You believe you had a

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1 duty to provide truthful and accurate
2 information to all parties including
3 courts, correct?
4 A. Yes, yes.
5 Q. Okay. And that would include
6 not withholding any evidence that might
7 lead to the discovery of relevant
8 admissible evidence, correct?
9 A. Whatever was required by the
10 cases.
11 MR. PLACITELLA: Okay.
12 Can you read my question back,
13 please?
14 - - - - -
15 (Whereupon, the reporter read
16 back as requested.)
17 - - - - -
18 THE WITNESS: In
19 general, yeah.
20 BY MR. PLACITELLA:
21 Q. Okay. And the ability to
22 provide truthful and accurate information
23 is entirely dependent on whether the
24 scientists and executives at Johnson &

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1 Johnson were entirely truthful and
2 forthright with you, right?
3 MS. BROWN: Objection,
4 speculation, foundation.
5 THE WITNESS: We
6 depended on them to provide us with
7 the information.
8 BY MR. PLACITELLA:
9 Q. Okay. Let me ask the question
10 again. Your ability in the context of
11 litigation to provide truthful and accurate
12 information is entirely and was entirely
13 dependent on whether the scientists and
14 executives at Johnson & Johnson were
15 entirely truthful and forthright with you?
16 MS. BROWN: Same
17 objections and asked and answered.
18 THE WITNESS: Yeah, you
19 know, in general, yes, but I'm
20 having trouble with entirely,
21 because there could have been other
22 sources of information that we
23 relied on to provide answers, I
24 just don't --

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1 BY MR. PLACITELLA:
2 Q. I understand that part, but you
3 depended on them to --
4 A. We did.
5 Q. -- tell you the truth and the
6 whole truth when you were asking for
7 information to respond to discovery, true?
8 A. Yes.
9 Q. Okay. Now, you go to your book
10 number one and take out Exhibit 188. And
11 I'm going to put it up on the screen. And
12 I'm putting up, the first page I'm going to
13 put up is 188.2. And 188.2 is a July 23,
14 1987, letter from Ronald Levitt to a
15 Mr. Ronald Grayzel.
16 A. I'm just having trouble.
17 Q. Yeah, I know, it's a lot of
18 stuff.
19 A. It's falling apart.
20 MS. BROWN: You know
21 what, I'm going to switch binders
22 with you, John.
23 THE WITNESS: Yeah,
24 thanks.

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1 MS. BROWN: Yeah, of
2 course.
3 - - - - -
4 (Stipulation of Dismissal,
5 Letter dated 7/23/87, Affidavit of
6 Roger Miller, and Letter dated
7 1/28/87 marked O'Shaughnessy
8 Exhibit 188 for identification.)
9 - - - - -
10 BY MR. PLACITELLA:
11 Q. See, Lea, I told you the
12 binders are too fat. Okay. This is a
13 letter from Ronald Levitt to Mr. Ron
14 Grayzel. He was a lawyer with an office in
15 Edison, New Jersey. Do you see that?
16 A. I do.
17 Q. And he -- and it's written, it
18 says enclosed please find -- here, let me
19 get -- blow that up. "Enclosed please find
20 an affidavit on behalf of Windsor Minerals,
21 Inc. signed by Roger Miller, president of
22 Windsor Minerals since 1968." Do you see
23 that?
24 A. I do.

<p style="text-align: right;">Page 464</p> <p>1 Q. He was one of the people you 2 relied on to tell you the truth and the 3 whole truth? 4 A. Yes. 5 Q. Okay. It says "Also enclosed 6 you will find an assay from McCrone 7 Environmental Services. I trust that these 8 documents will now unable to sign a 9 dismissal as was done in the Yuhas file." 10 Do you see that? 11 A. Yes. 12 Q. And now I want to go to the 13 actual affidavit of Mr. Miller. That's the 14 next page. He says that -- and Mr. Miller 15 was the president of Johnson & Johnson, 16 correct -- of Windsor Minerals, correct? 17 A. Yes. 18 Q. And that was a wholly-owned 19 subsidiary of Johnson & Johnson, correct? 20 A. Yes. 21 Q. And you worked as a lawyer, you 22 worked as a lawyer for both Windsor 23 Minerals and Johnson & Johnson at the same 24 time?</p>	<p style="text-align: right;">Page 466</p> <p>1 by Windsor Minerals, Inc., whether it is 2 ultimately sold to industrial users or used 3 in Johnson's Baby Powder, is sampled and 4 tested for the presence of asbestos." Do 5 you see that? 6 A. I do. 7 Q. "No evidence of the presence of 8 asbestos in Windsor Minerals' product has 9 ever be revealed by this testing." Do you 10 see that? 11 A. Yes. 12 Q. And you understand there's a 13 difference between saying no evidence, but 14 there is evidence, but we don't agree with 15 it? You understand there's a difference, 16 right? 17 MS. BROWN: Objection, 18 vague. 19 THE WITNESS: Yeah, I 20 guess so, yeah. 21 BY MR. PLACITELLA: 22 Q. Okay. And what he does is he 23 attaches a report. Do you see that? 24 That's the next page.</p>
<p style="text-align: right;">Page 465</p> <p>1 A. Yes. 2 Q. Okay. And Mr. Miller says "I 3 am the president of Windsor Minerals." Do 4 you see that? 5 A. Yes. 6 Q. And then he goes on and he says 7 "The exclusive business of Windsor 8 Minerals, Inc. is and has been for the last 9 18 years the mining and milling of talc 10 from a single mining district in Windsor, 11 Vermont. The mining district is the 12 exclusive source of talc for all Johnson's 13 Baby Powder sold in the United States." 14 That was your understanding, correct? 15 A. Yes. 16 Q. Okay. He goes on to say, "In 17 addition to supplying the talc for 18 Johnson's Baby Powder, Windsor Minerals 19 also sells a portion of its product to 20 independent industrial users." Do you see 21 that? 22 A. I do. 23 Q. Okay. Go to the next page, 24 please. He states "All of the talc mined</p>	<p style="text-align: right;">Page 467</p> <p>1 A. I do, yes. 2 Q. And you've seen reports like 3 this before in defending Johnson & Johnson, 4 correct? 5 A. I've seen testing reports from 6 time to time, yes. 7 Q. Okay. And what the report 8 says, it gives a whole bunch of numbers and 9 it says "examination found no quantifiable 10 amounts of asbestiform minerals." Do you 11 see that? 12 A. I do. 13 Q. Now, have you ever been 14 involved in drafting similar affidavits? 15 Were you involved in drafting this 16 affidavit? 17 A. No, it was before my time 18 there. 19 Q. Were you ever involved in 20 drafting similar affidavits? 21 A. I believe so. 22 Q. Okay. And do you know what the 23 factual predicate is for this affidavit? 24 What's the factual basis for it?</p>

<p style="text-align: right;">Page 468</p> <p>1 MS. BROWN: I object, 2 that last foundation, he said he 3 wasn't involved in this affidavit. 4 MR. PLACITELLA: You can 5 answer it. 6 THE WITNESS: I don't 7 know the factual -- for this 8 particular affidavit, I don't know. 9 I mean, I didn't prepare it, so I 10 don't know that I had any 11 discussions around it, et cetera. 12 BY MR. PLACITELLA: 13 Q. Okay. Can you go to Johnson & 14 Johnson 1054, which is in book two? While 15 you're looking, can you tell me who John N. 16 Beidler is? 17 A. He was an attorney with Johnson 18 & Johnson. 19 - - - - 20 (Letter dated 8/27/86 marked 21 O'Shaughnessy Exhibit 1054 for 22 identification.) 23 - - - - 24</p>	<p style="text-align: right;">Page 470</p> <p>1 allegation in the Complaint, does not now 2 engage or has never engaged in the 3 manufacture or supply of 4 asbestos-containing products." Do you see 5 that? 6 A. Yes. 7 Q. And then he goes on to say 8 "Rather, the exclusive business of Windsor 9 Minerals is and has been the mining and 10 milling of talc from a single mining 11 district in Windsor, Vermont. That mining 12 district is the exclusive source of the 13 talc for all of the Johnson's Baby Powder 14 sold in the United States as well as a 15 source of pure talc sold to independent 16 industrial users." Did I read that 17 correctly? 18 A. Yes. 19 Q. "All of the talc mined by 20 Windsor Minerals, whether ultimately sold 21 to industrial users or used in Johnson's 22 Baby Powder, is sampled and tested for the 23 presence of asbestos and no evidence of the 24 presence of asbestos in any Windsor Mineral</p>
<p style="text-align: right;">Page 469</p> <p>1 BY MR. PLACITELLA: 2 Q. He worked with you in defending 3 talc cases? 4 A. No, he handled it before I came 5 to the company. 6 Q. Okay. And did he work for the 7 office of general counsel? 8 A. He did. 9 Q. All right. 1054 is a letter 10 from John Beidler to the same Ronald 11 Grayzel in the Edley case. Do you see 12 that? 13 A. Yes. 14 Q. And it's on Johnson & Johnson 15 letterhead indicating it came from the 16 office of the general counsel, correct? 17 A. Yes. 18 Q. Okay. And what Mr. Beidler -- 19 MS. BROWN: Object to 20 this document as lacking 21 foundation. 22 BY MR. PLACITELLA: 23 Q. States is "Please be advised 24 that Windsor Minerals Inc., contrary to the</p>	<p style="text-align: right;">Page 471</p> <p>1 product has ever been revealed." Do you 2 see that? 3 A. I do. 4 Q. That's the same exact language 5 that ended up in Mr. Miller's affidavit, 6 isn't it? 7 A. If you say so, I didn't compare 8 them. It's similar, certainly. 9 Q. So now we know where Mr. Miller 10 got the information? 11 MS. BROWN: I object, 12 speculation, foundation. 13 THE WITNESS: No. I 14 wasn't employed by the company at 15 this time, so you're asking me 16 questions that I don't know. 17 BY MR. PLACITELLA: 18 Q. It goes on to say "Under the 19 circumstances, there obviously can be no 20 reasonable knowledge, information or belief 21 which provides good ground to support to 22 pleading under Rule 1:48." Do you see 23 that? 24 A. I do.</p>

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1 Q. You were a New Jersey lawyer,
 2 correct?
 3 A. I was, yeah.
 4 Q. And you know that that is the
 5 citation to the New Jersey frivolous
 6 lawsuit statute, right?
 7 A. I don't recall it.
 8 Q. And you understand that the
 9 frivolous lawsuit statute, when you write a
 10 letter like this, you are threatening a
 11 lawyer with sanctions if they don't dismiss
 12 the complaint?
 13 MS. BROWN: I object.
 14 That misstates the evidence and
 15 lacks foundation.
 16 THE WITNESS: I didn't
 17 write this letter.
 18 BY MR. PLACITELLA:
 19 Q. Did you ever write similar
 20 letters?
 21 A. I don't believe I did.
 22 Q. Okay. Now, I want to go back
 23 to 188. When we talked about the
 24 information that was in the letter where

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1 Miller attached the tests from McCrone.
 2 A. Yes.
 3 Q. Okay. And he used a
 4 nonquantifiable, no quantifiable amount
 5 language?
 6 A. Yes.
 7 MS. BROWN: Objection,
 8 vague.
 9 BY MR. PLACITELLA:
 10 Q. And that's language that you're
 11 familiar with, correct?
 12 MS. BROWN: Objection,
 13 foundation.
 14 THE WITNESS: I know
 15 it's language used in testing
 16 reports.
 17 BY MR. PLACITELLA:
 18 Q. Okay. And but before we get
 19 there, let's just go to the front of this.
 20 The very first page of 188.
 21 A. Yes.
 22 Q. Do you see that after this
 23 affidavit was produced, Mr. Grayzel agreed
 24 to dismiss this case?

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1 MS. BROWN: Objection,
 2 foundation, speculation.
 3 THE WITNESS: I don't
 4 know. What I'm looking at is a
 5 Stipulation of Dismissal.
 6 BY MR. PLACITELLA:
 7 Q. Right. And this Stipulation of
 8 Dismissal was actually filed with the judge
 9 in charge of all the asbestos cases in the
 10 State of New Jersey, Judge Keefe. Did you
 11 know Judge Keefe?
 12 MS. BROWN: Objection,
 13 speculation, foundation.
 14 THE WITNESS: I don't
 15 know judge -- did Judge Keefe
 16 retire and become a mediator?
 17 BY MR. PLACITELLA:
 18 Q. Eventually, yes, after he went
 19 to the appellate division with a very fine
 20 career.
 21 A. That's how I know Judge Keefe.
 22 Q. Okay. And if you look at 1053,
 23 J&J 1053, which should be in your book two.
 24 You will see that the Stipulation of

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1 Dismissal was filed with Judge Keefe. Do
 2 you see that?
 3 A. I do.
 4 - - - - -
 5 (Letter dated 6/6/88 marked
 6 O'Shaughnessy Exhibit 1053 for
 7 identification.)
 8 - - - - -
 9 BY MR. PLACITELLA:
 10 Q. Okay. And one of the people
 11 that you say you relied upon was John
 12 Hopkins, correct?
 13 A. Yes.
 14 Q. Are you aware that in trial
 15 before a jury, John Hopkins testified that
 16 this document, this affidavit was false on
 17 its face?
 18 MS. BROWN: I object.
 19 Misstates the evidence. Lacks
 20 foundation.
 21 BY MR. PLACITELLA:
 22 Q. Okay. I'll show you the
 23 evidence. Can you go to your transcript
 24 book, please, where it says Hopkins TR?

<p style="text-align: right;">Page 476</p> <p>1 A. One or two?</p> <p>2 Q. Yeah, hold on. It's 1060 in</p> <p>3 the transcript book. It says trial</p> <p>4 testimony in the Barden case and I'll put</p> <p>5 it up. And I'll put it up on the screen</p> <p>6 for you, if you need to look at it later --</p> <p>7 MS. BROWN: Well, can he</p> <p>8 review, hear the entirety of the</p> <p>9 testimony?</p> <p>10 MR. PLACITELLA: The</p> <p>11 whole transcript, I think we don't</p> <p>12 have time for that, but --</p> <p>13 MS. BROWN: I want to</p> <p>14 know where this is talked about on</p> <p>15 redirect.</p> <p>16 MR. PLACITELLA: You can</p> <p>17 ask him all that on redirect.</p> <p>18 MS. BROWN: Are you</p> <p>19 putting that up or can he --</p> <p>20 MR. PLACITELLA: I'm</p> <p>21 putting the whole document into</p> <p>22 evidence, so no problem.</p> <p>23 THE WITNESS: I'm just</p> <p>24 trying to find the document.</p>	<p style="text-align: right;">Page 478</p> <p>1 1060A.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. You know what, we'll come back</p> <p>4 to it, because I'm trying to get this done</p> <p>5 today. Did John Hopkins ever have a</p> <p>6 conversation with you and tell you that</p> <p>7 affidavits like this were untrue?</p> <p>8 A. I had many conversations with</p> <p>9 John. I never had a discussion with him</p> <p>10 about an untrue affidavit.</p> <p>11 Q. Okay. In 188, do you see where</p> <p>12 Johnson & Johnson told Mr. Grayzel that</p> <p>13 they wanted a dismissal in this case just</p> <p>14 like he gave in the other cases?</p> <p>15 A. Can you put it up? I'm having</p> <p>16 trouble with -- I'm sorry.</p> <p>17 Q. That's okay, I put it right in</p> <p>18 front of you.</p> <p>19 MS. BROWN: So, John, if</p> <p>20 you want the hard copy, I think we</p> <p>21 are now back in binder one and</p> <p>22 we're looking at 188, which you</p> <p>23 probably still have open or close</p> <p>24 to open.</p>
<p style="text-align: right;">Page 477</p> <p>1 MR. PLACITELLA: I put</p> <p>2 it up on the transcript --</p> <p>3 MS. BROWN: Right, I</p> <p>4 just wanted to go to the document</p> <p>5 and see the cover sheet. Oh, that</p> <p>6 single sheet is the exhibit?</p> <p>7 - - - - -</p> <p>8 (Transcript of John Hopkins</p> <p>9 marked O'Shaughnessy Exhibit 1060</p> <p>10 for identification.)</p> <p>11 - - - - -</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Yes, sir. I'll put the whole</p> <p>14 transcript into evidence.</p> <p>15 A. Okay.</p> <p>16 MS. BROWN: I'll just</p> <p>17 object to selective reading --</p> <p>18 THE WITNESS: I'm just</p> <p>19 trying to go to your sheet.</p> <p>20 MS. BROWN: -- of this</p> <p>21 questioning. That's incomplete.</p> <p>22 THE WITNESS: 1068?</p> <p>23 MR. PLACITELLA: 1060.</p> <p>24 THE WITNESS: I have</p>	<p style="text-align: right;">Page 479</p> <p>1 MR. PLACITELLA: You can</p> <p>2 look at the hard copy, but I'm</p> <p>3 not --</p> <p>4 THE WITNESS: You know,</p> <p>5 part of the problem is, it says</p> <p>6 '88, but there's a handwritten one</p> <p>7 and that gets confusing.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. I understand.</p> <p>10 A. I got it. I got it.</p> <p>11 Q. Do you see where it says "I</p> <p>12 trust these documents will now enable you</p> <p>13 to sign a dismissal." And when they say</p> <p>14 these documents, they're talking about the</p> <p>15 Miller affidavit, right?</p> <p>16 MS. BROWN: I object,</p> <p>17 foundation.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. "As was done in the Yuhas</p> <p>20 file". Do you see that?</p> <p>21 A. Yes, you read that to me</p> <p>22 before.</p> <p>23 Q. So this was a second case that</p> <p>24 was dismissed based upon the representation</p>

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1 of no asbestos being in the Johnson &
2 Johnson talc, right?
3 MS. BROWN: Lacks
4 foundation, I object.
5 THE WITNESS: I don't
6 know.
7 BY MR. PLACITELLA:
8 Q. Okay. Whatever happened to the
9 Yuhas file, do you know?
10 A. I have no idea. That was
11 before my time.
12 Q. Do you know what happened to
13 the Edley file?
14 A. No.
15 Q. Going back to the report in
16 188.5, that talks about no quantifiable
17 evidence?
18 A. Okay.
19 Q. Okay. Are you aware that the
20 term "nonquantifiable" does not mean
21 asbestos free as Mr. Miller actually
22 states?
23 MS. BROWN: I object.
24 That misstates the evidence and

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1 lacks foundation.
2 THE WITNESS: I'm not
3 competent to interpret what that
4 term means.
5 BY MR. PLACITELLA:
6 Q. Did you know that that was a
7 code word for not reporting the actual test
8 results?
9 MS. BROWN: Objection.
10 Misstates the evidence, the facts,
11 lacks foundation.
12 THE WITNESS: I never
13 heard anything about a code word.
14 BY MR. PLACITELLA:
15 Q. Did you ever see any of the
16 Johnson & Johnson, McCrone, the test
17 results that McCrone did for Johnson &
18 Johnson before 1988?
19 A. I've seen some testing
20 documents and I think I've seen some from
21 McCrone, the date of which I'm not sure.
22 Q. Okay. I'm going to provide you
23 what I have marked as JOS 1 and JOS 1A,
24 which I will represent to you are

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1 documents, McCrone test results that were
2 provided predating the Edley report, the
3 Edley affidavit with one exception. And
4 there's a copy for you behind you.
5 MS. BROWN: Okay. Can
6 we hang on, so we can grab copies
7 of this?
8 MR. PLACITELLA: Yeah,
9 there's McCrone 1 and 2 and there's
10 a copy behind you as well on the
11 radiator.
12 MR. BERNARDO: All
13 right. Chris, McCrone 1 and 2?
14 MR. PLACITELLA:
15 Correct.
16 MR. BERNARDO: Thanks.
17 - - - - -
18 (McCrone Binders marked
19 O'Shaughnessy Exhibits JOS 1 and 2
20 for identification.)
21 - - - - -
22 BY MR. PLACITELLA:
23 Q. And can you, in McCrone number
24 1, can you go to Exhibit 180.2?

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1 A. Got it.
2 MR. COX: I have 180.
3 MS. BROWN: Oh, the
4 second page of 180.
5 MR. PLACITELLA: It
6 says, I put numbers so people can
7 see it.
8 MS. BROWN: We got it.
9 BY MR. PLACITELLA:
10 Q. You can see that this report is
11 from August 1985, correct?
12 A. That's what it says here.
13 Q. Okay. And that was -- and it's
14 a letter from McCrone, correct?
15 A. That's right.
16 Q. All right. And that predates
17 the Miller affidavit, correct?
18 MS. BROWN: Object as
19 lacking foundation.
20 THE WITNESS: It's 1985.
21 BY MR. PLACITELLA:
22 Q. Okay. And can we go to the
23 second page? Do you see where it says "The
24 presence of asbestos minerals was verified

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1 by selected area electron diffraction,
 2 (SAED), energy dispersive X-ray analysis
 3 and by morphology." Did I read that
 4 correct?
 5 A. Yes.
 6 Q. It says "Chrysotile asbestos
 7 was detected only in the samples labeled
 8 WMI 85-28 and WMI 85-30." Do you see that?
 9 A. I do.
 10 Q. Okay. Now, I'm going to leave
 11 that. And if you can now go to book two in
 12 your J&J books. Okay. And go to
 13 Exhibit 1048. And I'm going to put it up
 14 on the screen. I'm going to show you the
 15 whole thing.
 16 A. I got it.
 17 - - - - -
 18 (Letter dated 9/10/85 Bates JNJ
 19 000064652 marked O'Shaughnessy
 20 Exhibit 1048 for identification.)
 21 - - - - -
 22 BY MR. PLACITELLA:
 23 Q. And do you see this is a letter
 24 a month later from Roger Miller, right?

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1 A. Yes.
 2 Q. All right. And the date is
 3 September 10, 1985, right?
 4 A. Yes.
 5 Q. And Roger Miller is one of the
 6 people that you depended upon to tell you
 7 the whole truth, right?
 8 A. Yes.
 9 Q. And Roger Miller writes to
 10 McCrone. Do you see that?
 11 A. Yes.
 12 Q. And he writes and he says "I am
 13 touching base with you on methodology and
 14 reports by your representatives on analysis
 15 of our products. I also want to complain
 16 on their failure to read our
 17 correspondence." Did I read that correct?
 18 A. You did.
 19 Q. It says, I'm sorry, "We
 20 submitted, on July 11, to Mark Palenik,
 21 seven samples." Do you see that?
 22 A. Yeah.
 23 Q. And you got -- and he got a
 24 report back on August 22. Do you see that?

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1 A. Uh-huh.
 2 Q. All right. And that's the
 3 August 22 report up on the screen to the
 4 left. Do you see that?
 5 MS. BROWN: That lacks
 6 foundation.
 7 THE WITNESS: You know,
 8 I don't know, this is before I was
 9 with Johnson & Johnson, but, you
 10 know, it's connected to it, I
 11 guess.
 12 BY MR. PLACITELLA:
 13 Q. Yeah, I'm just trying to figure
 14 out if they told you the whole truth.
 15 MS. BROWN: Well, that's
 16 argumentative.
 17 MR. PLACITELLA: So let
 18 me ask you --
 19 MS. BROWN: Wait, hold
 20 on, hold on.
 21 THE WITNESS: They did,
 22 as far as I'm concerned.
 23 MR. PLACITELLA: Well,
 24 let's find out.

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1 MS. BROWN: Chris
 2 Placitella, let him finish. I
 3 object as argumentative and I
 4 object to both of these documents
 5 as lacking foundation.
 6 BY MR. PLACITELLA:
 7 Q. Okay. It says on the next
 8 paragraph, "The August 22 report is couched
 9 in substantially different language than
 10 earlier reports. As I explained to you on
 11 my visit to Chicago it is a very important
 12 that specific language be used." Do you
 13 see that?
 14 A. I do.
 15 Q. Okay. And now I'm going to
 16 show you, can you go to J&J 181 in the
 17 McCrone book of testing.
 18 A. Got it.
 19 Q. Okay. Do you see this is a
 20 subsequent report now written by McCrone to
 21 Mr. Miller. Do you see that?
 22 A. Yes.
 23 Q. Okay. And it references the
 24 same exact samples from the August 22,

<p style="text-align: right;">Page 488</p> <p>1 1985, report where McCrone reported 2 asbestos in the testing, right? 3 MS. BROWN: Lacks 4 foundation. 5 THE WITNESS: I didn't 6 check, but I assume you're right. 7 BY MR. PLACITELLA: 8 Q. It says, look, I don't want to 9 assume anything. The samples were 10 identified as WMI85-25 through 31, right. 11 And that's the same one, I have it up on 12 the screen right in front of you, it's the 13 same samples? 14 A. Yes. 15 Q. But after being admonished by 16 Mr. Miller, the new letter says the 17 following, correct. "Under your purchase 18 order, WS-17577, we received seven talc 19 samples for asbestos analysis. The samples 20 were identified as WMI85-25 through 21 WMI85-31. Examination by transmission 22 election microscopy did not find any 23 quantifiable amount of asbestiform minerals 24 in any of the samples." Did I read that</p>	<p style="text-align: right;">Page 490</p> <p>1 admonishment. I saw a letter from 2 Mr. Miller to him, so you know, 3 you're asking me to interpret 4 something, you know, I have no 5 familiarity with. 6 BY MR. PLACITELLA: 7 Q. Well, that's the issue I'm 8 having. Was this ever shared with you by 9 Mr. Miller? 10 MS. BROWN: Objection to 11 the speech. 12 THE WITNESS: I don't 13 know if I saw these documents 14 before. I saw a lot of documents. 15 I don't know. 16 BY MR. PLACITELLA: 17 Q. Well, would you allow 18 Mr. Miller to sign an affidavit saying 19 there was absolutely no evidence if you had 20 seen these reports before he signed the 21 affidavit? 22 MS. BROWN: Objection. 23 Misstates the evidence. 24 THE WITNESS: It's a</p>
<p style="text-align: right;">Page 489</p> <p>1 correct? 2 MS. BROWN: Object to 3 the question as argumentative and 4 lacking foundation. 5 THE WITNESS: What is 6 the question, did you read it 7 correctly? 8 BY MR. PLACITELLA: 9 Q. Yes, sir. 10 A. You read it correct. 11 Q. And the report was changed from 12 finding asbestos to finding no asbestos 13 after Roger Miller weighed in and 14 admonished McCrone for using asbestos 15 findings in the report. Isn't that what 16 happened? 17 MS. BROWN: Incorrect, 18 misstates the evidence. Lacks 19 foundation. Calls for speculation. 20 THE WITNESS: You're 21 asking me for what happened two 22 years before I was at the company, 23 so I don't know that happened. I 24 don't know if there was an</p>	<p style="text-align: right;">Page 491</p> <p>1 hypothetical I can't answer. 2 MS. BROWN: Lacks 3 foundation. 4 THE WITNESS: Because I 5 would have to have him explain to 6 me, you know, these documents. 7 BY MR. PLACITELLA: 8 Q. Did he ever explain to you 9 these documents? 10 A. Like I said, I don't know if I 11 ever discussed it with him or not. 12 Q. So you have no recollection of 13 him explaining these documents to you? 14 A. No, it has been, you know, over 15 30 years since I worked on these cases. 16 Q. You don't think you would 17 remember if somebody was filing an 18 affidavit that said there was no evidence 19 and they actually showed you evidence? 20 MS. BROWN: That lacks 21 foundation. 22 THE WITNESS: Well, 23 that's easy, because I never was 24 aware of any evidence that showed</p>

<p style="text-align: right;">Page 492</p> <p>1 that anything that the company was</p> <p>2 stating in its affidavits was not</p> <p>3 truthful.</p> <p>4 BY MR. PLACITELLA:</p> <p>5 Q. Okay. You didn't see the</p> <p>6 McCrone report reporting asbestos then?</p> <p>7 MS. BROWN: That</p> <p>8 misstates testimony.</p> <p>9 THE WITNESS: No, I</p> <p>10 don't know if I did or didn't.</p> <p>11 MS. BROWN: Can we take</p> <p>12 a break and figure out why there's</p> <p>13 no air conditioning in this room</p> <p>14 right now?</p> <p>15 MR. PLACITELLA: Sure.</p> <p>16 MS. BROWN: Thank you.</p> <p>17 THE VIDEOGRAPHER: Off</p> <p>18 the record, 10:28 a.m.</p> <p>19 - - - - -</p> <p>20 (A recess was taken at this time.)</p> <p>21 - - - - -</p> <p>22 THE VIDEOGRAPHER: We</p> <p>23 are back on the record at</p> <p>24 10:43 a.m.</p>	<p style="text-align: right;">Page 494</p> <p>1 and his testimony or sworn affidavits,</p> <p>2 correct?</p> <p>3 MS. BROWN: Objection,</p> <p>4 foundation, speculation.</p> <p>5 THE WITNESS: I don't</p> <p>6 know if there's anything else.</p> <p>7 That sounds right, but you know,</p> <p>8 there may other things I just</p> <p>9 sitting here can't think of.</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. Okay. That's fair. Before I</p> <p>12 move to the next topic, going back to 1054,</p> <p>13 this is the letter to Mr. Grayzel where</p> <p>14 Johnson & Johnson's threatened Mr. Grayzel</p> <p>15 with frivolous lawsuit sanctions?</p> <p>16 MS. BROWN: Well, that</p> <p>17 misstates the document. I object.</p> <p>18 MR. PLACITELLA: Oh, I</p> <p>19 don't think it misstates anything.</p> <p>20 MS. BROWN: It's your</p> <p>21 interpretation.</p> <p>22 BY MR. PLACITELLA:</p> <p>23 Q. It says on the bottom</p> <p>24 "Parenthetically, we received a Complaint</p>
<p style="text-align: right;">Page 493</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. Okay. Would you agree that</p> <p>3 when witnesses die, unless there's</p> <p>4 something in writing, their personal</p> <p>5 knowledge concerning the facts related to a</p> <p>6 case die with them?</p> <p>7 MS. BROWN: Foundation.</p> <p>8 THE WITNESS: You know,</p> <p>9 I don't know what, you know,</p> <p>10 unfortunately, look, this is</p> <p>11 obvious, when a person dies,</p> <p>12 whatever they know or knowledge</p> <p>13 with them as a source has ended.</p> <p>14 So I don't know, I'm agreeing</p> <p>15 with --</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. So, for example, with</p> <p>18 Mr. Miller, he's dead, right?</p> <p>19 A. I believe he is. I was never</p> <p>20 told that, but I just, based on his age, it</p> <p>21 does --</p> <p>22 Q. So the only thing we have left,</p> <p>23 because we didn't have a chance to take</p> <p>24 this deposition, was the letters he wrote</p>	<p style="text-align: right;">Page 495</p> <p>1 several months ago filed by the Wysoker</p> <p>2 firm here in New Brunswick," because the</p> <p>3 Wysoker firm was right down the street from</p> <p>4 Johnson & Johnson, wasn't it?</p> <p>5 A. I don't know. I don't know.</p> <p>6 Q. And the courthouse where these</p> <p>7 affidavits were filed and these letters</p> <p>8 related to, that was, like, two or three</p> <p>9 blocks from your headquarters, right?</p> <p>10 A. If they were filed in Middlesex</p> <p>11 County Courthouse, yes.</p> <p>12 Q. And it says we received a</p> <p>13 Complaint from the Wysoker firm a few</p> <p>14 months ago from another employee who worked</p> <p>15 at the same place, we told them the same</p> <p>16 thing and the plaintiff lawyer dismissed</p> <p>17 his case, right?</p> <p>18 MS. BROWN: Lacks</p> <p>19 foundation. Misstates the</p> <p>20 document.</p> <p>21 THE WITNESS: I don't</p> <p>22 know, I don't know the facts of the</p> <p>23 case and you just kind of summed it</p> <p>24 up, I don't --</p>

<p>Page 496</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. I don't want to misstate so --</p> <p>3 MS. BROWN: Let him</p> <p>4 finish his answer.</p> <p>5 THE WITNESS: I'm not</p> <p>6 saying you misstated anything, it's</p> <p>7 just that I don't know. I don't</p> <p>8 know Bird & Son. I don't know the</p> <p>9 Wysoker firm and I don't know this</p> <p>10 other complaint that is mentioned</p> <p>11 by complaint. Again, this is</p> <p>12 before my time there. I have no</p> <p>13 knowledge of this.</p> <p>14 BY MR. PLACITELLA:</p> <p>15 Q. Well, now I've counted three</p> <p>16 cases that were apparently dismissed based</p> <p>17 upon the representation that there's no</p> <p>18 evidence of asbestos in Johnson & Johnson's</p> <p>19 talc, right?</p> <p>20 MS. BROWN: That</p> <p>21 assumes, misstates the evidence and</p> <p>22 lacks foundation.</p> <p>23 THE WITNESS: That could</p> <p>24 be true. I don't know.</p> <p>Page 497</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. Okay. And what happened to the</p> <p>3 file from the Wysoker firm's file when the</p> <p>4 case was dismissed? What happened to that</p> <p>5 file?</p> <p>6 MS. BROWN: Foundation.</p> <p>7 THE WITNESS: I have no</p> <p>8 idea. I don't know.</p> <p>9 BY MR. PLACITELLA:</p> <p>10 Q. Now, there was a case named</p> <p>11 Andonian, A-N-D-O-N-I-A-N. You know that</p> <p>12 case, correct?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Okay. Can you go to 1061,</p> <p>15 please?</p> <p>16 A. Okay.</p> <p>17 - - - - -</p> <p>18 (Andonian Case Witness List</p> <p>19 Bates JNJ 000065334 to 65339 marked</p> <p>20 O'Shaughnessy Exhibit 1061 for</p> <p>21 identification.)</p> <p>22 - - - - -</p> <p>23 BY MR. PLACITELLA:</p> <p>24 Q. And 1061 is a document dated</p>	<p>Page 498</p> <p>1 March 28, 1995, with your stamp received on</p> <p>2 it. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. And it's a witness list in the</p> <p>5 Andonian case, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And can you go to 282 in</p> <p>8 book one, please, and I'll put it up. 282,</p> <p>9 while you're looking for it, and I'll</p> <p>10 identify it is an affidavit filed by Roger</p> <p>11 Miller, July 8, 1988, in the Andonian case.</p> <p>12 Do you see that?</p> <p>13 A. My book seems to skip.</p> <p>14 Q. It should be 282.</p> <p>15 A. 259 to 297. Does that sound</p> <p>16 right?</p> <p>17 Q. It doesn't sound right, but</p> <p>18 maybe I can fix it at the break. I'll show</p> <p>19 you the whole thing here.</p> <p>20 MS. BROWN: I'm going to</p> <p>21 give you my copy, John, 282.</p> <p>22 THE WITNESS: Just pile</p> <p>23 it on.</p> <p>24 MS. BROWN: Are we done</p> <p>Page 499</p> <p>1 with the McCrone books or do we</p> <p>2 keep them?</p> <p>3 MR. PLACITELLA: I think</p> <p>4 you keep them handy.</p> <p>5 THE WITNESS: Okay.</p> <p>6 - - - - -</p> <p>7 (Roger Miller Affidavit in</p> <p>8 Andonian case Bates</p> <p>9 JNJ-WIL__0000094 to 95 marked</p> <p>10 O'Shaughnessy Exhibit 282 for</p> <p>11 identification.)</p> <p>12 - - - - -</p> <p>13 BY MR. PLACITELLA:</p> <p>14 Q. This an affidavit filed by</p> <p>15 Mr. Miller in a case that you worked on.</p> <p>16 A. That's right.</p> <p>17 Q. Okay. And if you go to the</p> <p>18 second page, Mr. Miller -- this is a year</p> <p>19 after the Edley case, right?</p> <p>20 A. Yes.</p> <p>21 Q. Mr. Miller states under oath</p> <p>22 "All of the talc mined by Windsor Minerals</p> <p>23 has been regularly sampled and tested for</p> <p>24 the presence of asbestos. No evidence of</p>
--	--

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1 the presence of asbestos in Windsor
 2 Minerals, Inc.'s products has ever been
 3 revealed by this testing." Did I read that
 4 correctly?
 5 A. Yes.
 6 Q. And this affidavit, however,
 7 doesn't attach any documents, correct?
 8 MS. BROWN: Objection,
 9 foundation.
 10 THE WITNESS: Not, I
 11 don't see any others.
 12 BY MR. PLACITELLA:
 13 Q. Okay. So do you have the
 14 McCrone reports?
 15 A. I have those two binders you
 16 gave me.
 17 Q. Yes.
 18 A. Yes.
 19 Q. Could we just put them over
 20 here to your right, if you wouldn't mind.
 21 There should be two.
 22 MS. BROWN: There's one
 23 behind you.
 24 THE WITNESS: Oh, I put

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1 it on the floor, I'm sorry.
 2 BY MR. PLACITELLA:
 3 Q. So here's one and two.
 4 A. Okay.
 5 Q. And my question to you is did
 6 you turn over any of those documents in the
 7 Andonian case?
 8 MS. BROWN: Objection.
 9 MR. PLACITELLA: In
 10 McCrone 1 and 2.
 11 MS. BROWN: Number one,
 12 I object. We don't know what's in
 13 those binders, and number two, I
 14 object as lacking foundation.
 15 MR. PLACITELLA: Well,
 16 they're all the McCrone reports.
 17 I'll represent that to you. Did
 18 you turn over any McCrone reports
 19 in the Andonian case?
 20 MS. BROWN: Objection to
 21 form. Lacks foundation.
 22 THE WITNESS: I don't
 23 recall what was or was not turned
 24 over in the Andonian case or what

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1 the state of the discovery was, so
 2 I really can't answer the question.
 3 BY MR. PLACITELLA:
 4 Q. Well, in the context of
 5 submitting to the plaintiffs -- and by the
 6 way, there were hundreds of plaintiffs in
 7 the Andonian case, right?
 8 A. I don't recall.
 9 Q. In the context of submitting an
 10 affidavit saying that there was no testing
 11 available in the Andonian case, right, no
 12 testing has ever revealed anything, did you
 13 turn over any of the testing documents?
 14 MS. BROWN: Hold on. I
 15 object as lacking foundation that
 16 there was even a request to Johnson
 17 & Johnson.
 18 THE WITNESS: I don't
 19 recall what was turned over in
 20 discovery or not.
 21 BY MR. PLACITELLA:
 22 Q. Okay. Now, if I might, I'm
 23 going to show you a book I went over with
 24 Ms. Musco in her deposition and with Dr.

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1 Hopkins in his deposition. And I spent
 2 three days, yeah, you can put it aside, I'm
 3 just going to put it right here. You can
 4 take a look at it. And tell me if perusing
 5 through it, did you turn any of these
 6 testing documents in the Andonian case?
 7 MS. BROWN: I object, we
 8 have -- lacking foundation that J&J
 9 was even a defendant in that case
 10 or that there were even any
 11 requests.
 12 MR. PLACITELLA: So you
 13 are --
 14 MS. BROWN: This whole
 15 line of questioning lacks --
 16 MR. PLACITELLA: You are
 17 representing on the record you were
 18 not a defendant in the case now?
 19 MS. BROWN: I am saying
 20 your question lacks foundation --
 21 MR. PLACITELLA: Oh,
 22 okay.
 23 MS. BROWN: -- as you
 24 have not even shown this witness a

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1 request in that case.
 2 BY MR. PLACITELLA:
 3 Q. Okay. Why don't we just --
 4 I'll represent to you, Mr. Hopkins -- I'm
 5 sorry, Mr. O'Shaughnessy, these are all the
 6 testing documents I went over with Dr.
 7 Hopkins for three days. Do you have any
 8 recollection of turning any of those
 9 documents over, any documents over in the
 10 Andonian case when you submitted the
 11 affidavit saying that there was no testing
 12 available?
 13 MS. BROWN: The
 14 affidavit does not say there's no
 15 testing available.
 16 MR. PLACITELLA: You're
 17 right.
 18 MS. BROWN: So you're
 19 misstating the evidence.
 20 BY MR. PLACITELLA:
 21 Q. When you submitted the
 22 affidavit that said no evidence of the
 23 presence of asbestos in Windsor Minerals
 24 products has ever been revealed, did you

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1 turn over any of those documents?
 2 MS. BROWN: I object,
 3 this whole line of questioning
 4 assume facts and misstates the
 5 evidence, and we have no idea
 6 what's in those binders.
 7 THE WITNESS: I don't
 8 recall what the state of discovery
 9 was in the Andonian case. And by
 10 that I mean, I don't know what they
 11 requested or what was turned over
 12 or even if they requested anything.
 13 That would have been a matter of
 14 record at the time. You asked me
 15 if I turned over any of these
 16 documents and you point to me three
 17 binders and I take you at your
 18 word. I respect that they are
 19 Johnson & Johnson testing. And you
 20 asked me if I turned over any of
 21 these documents. It's impossible
 22 for me to answer that question,
 23 because, A, I don't recall as I
 24 previously stated, but B, there's

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1 about a foot and a half of
 2 documents here. I would have to go
 3 through them to see if I recognize
 4 them and I don't recall, you know,
 5 things from 30 years ago.
 6 BY MR. PLACITELLA:
 7 Q. Okay.
 8 A. But my answer is, I go back to
 9 the beginning, my answer is I don't recall
 10 what the state of discovery may have been.
 11 Q. In the context of supplying
 12 this affidavit saying that no evidence of
 13 the presence was ever revealed, do you have
 14 a recollection of turning any of those
 15 testing documents?
 16 MS. BROWN: I object,
 17 again, as lacking foundation that
 18 this affidavit was even supplied by
 19 us.
 20 THE WITNESS: I give the
 21 same answer.
 22 BY MR. PLACITELLA:
 23 Q. Okay. Can you go to 1047.
 24 A. Got it.

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1 Q. Okay. 1047 is an affidavit
 2 submitted by Roger Miller on the exhibit
 3 same day as the Andonian case. Do you see
 4 that?
 5 A. I do.
 6 Q. Yes?
 7 A. I do.
 8 - - - - -
 9 (Affidavit of Roger Miller in
 10 Miller case marked O'Shaughnessy
 11 Exhibit 1047 for identification.)
 12 - - - - -
 13 BY MR. PLACITELLA:
 14 Q. Okay. And he represents in the
 15 Faye Miller case the same exact thing and
 16 he's talking -- and he's referencing here
 17 directly Windsor Minerals, that's you,
 18 right?
 19 A. That's the --
 20 MS. BROWN: Objection.
 21 Lacking foundation as to who
 22 submitted this affidavit.
 23 THE WITNESS: That's the
 24 subsidiary of Johnson & Johnson.

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1 BY MR. PLACITELLA:
2 Q. Right. And again, Roger Miller
3 on behalf of the subsidiary of Johnson &
4 Johnson represents in the sworn testimony
5 no evidence of the presence of asbestos in
6 Windsor Minerals' products has ever been
7 revealed, correct?
8 A. That's right.
9 Q. Do you have any recollection of
10 turning over any of the testing documents
11 to your right in the Faye Miller case?
12 MS. BROWN: Objection as
13 assuming facts that there were
14 requests and lacking foundation
15 that we were involved.
16 THE WITNESS: My same
17 answer as to the other questions, I
18 don't want to repeat. If it's okay
19 if I don't repeat it.
20 BY MR. PLACITELLA:
21 Q. Okay.
22 A. I can if you want me to.
23 Q. That's fine. Can you go to --
24 by the way, what happened to the Andonian

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1 files when the case was terminated?
2 MS. BROWN: Lacks
3 foundation.
4 BY MR. PLACITELLA:
5 Q. Because they weren't turned
6 over in discovery.
7 MS. BROWN: To who -- I
8 object. That lacks foundation on
9 so many levels and it's vague as to
10 turning over in discovery.
11 BY MR. PLACITELLA:
12 Q. Well, let me just -- let me
13 withdraw the question. What happened to
14 the Andonian files when the case was
15 terminated?
16 A. I don't know. I mean, they
17 could be there or they could have been
18 processed according to the document
19 retention policy.
20 Q. But you didn't have a document
21 retention policy back then?
22 A. I think what happened in -- at
23 some point in time, cases that were in the
24 file room would come up to the attorneys'

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1 attention over whether do we need to keep
2 this file for a reason or not and it would
3 be put in off-site storage.
4 Q. Okay. Can you produce for me a
5 hold notice or a document retention notice
6 from the 1980s when these cases were filed
7 and terminated?
8 A. I wasn't with the company until
9 1987. I'm not sure if there were hold
10 notices, if that was a tool we were using.
11 I don't know when we began to use that
12 tool. So you're asking me for the first
13 hold notice, I don't -- I can't -- by the
14 way, I don't have any of the documents --
15 Q. Okay.
16 A. -- myself.
17 Q. What about the documents from
18 the Faye Miller case, what happened to
19 those?
20 A. When you say documents, you
21 mean the pleadings and that sort of thing?
22 Q. Yeah.
23 A. Again, it was the practice to
24 keep it in a file room and then when the

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1 case was filed, the case was closed and it
2 eventually went to off-site storage.
3 Q. Now, can you go to J&J 446,
4 which is in your book two.
5 A. Got it.
6 Q. J&J 446 is an agreement between
7 Cyprus Mines and Johnson & Johnson dated
8 January 6, 1989, correct?
9 A. Yes.
10 - - - - -
11 (Agreement Between Cyprus & J&J
12 dated 1/6/89 marked O'Shaughnessy
13 Exhibit 446 for identification.)
14 - - - - -
15 BY MR. PLACITELLA:
16 Q. And you were working on the
17 cases at that point, correct?
18 A. The talc cases, yes.
19 Q. And you recall that the mine,
20 the Windsor Mineral mines were sold to
21 Cyprus on or about that date?
22 A. They were sold probably on or
23 about that date, yeah.
24 Q. And what I want to you to look

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1 at is 446.111, page 111 on the exhibit tab.
 2 A. Got it.
 3 Q. Okay. And it states "Windsor,"
 4 that's Johnson & Johnson, right?
 5 A. Yes.
 6 Q. "Has been named as a defendant
 7 in various lawsuits which allege injuries
 8 related to exposure to asbestos and/or talc
 9 primarily by rubber/tire industry
 10 employees. The following cases are
 11 currently pending." Do you see that?
 12 A. Yes.
 13 Q. And you were in charge of all
 14 these cases, correct?
 15 A. You know, I'm just thinking at
 16 that time, '89, I might not have been
 17 formally in charge of all the talc cases,
 18 but I might have been.
 19 Q. Well, we know you worked on the
 20 Andonian and the Miller case, right?
 21 A. I'm just I'm thinking about
 22 that now. It depends on when they were
 23 filed. Because Mr. Beidler might have
 24 still been handling them for a while. I

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1 just don't recall when the transition was.
 2 It wasn't when I immediately went to the
 3 company, which was in '87, it took a while
 4 after that.
 5 Q. Is he dead now, Mr. Beidler?
 6 A. I don't know.
 7 Q. And what it states here is that
 8 the cases that were currently pending were
 9 Andonian, which looks like 277 people,
 10 correct?
 11 A. Yes.
 12 Q. And another one from Miller,
 13 that was only one person, right?
 14 A. Yes.
 15 Q. Adkins was 474 different
 16 people, correct?
 17 A. Yes.
 18 Q. And Akers was 229 different
 19 people, right?
 20 A. Yes.
 21 Q. And in all of those cases,
 22 Windsor Minerals asserted the same thing,
 23 there's no evidence whatsoever of asbestos
 24 in the talc, right?

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1 MS. BROWN: That lacks
 2 foundation.
 3 THE WITNESS: We covered
 4 some documents where they did do
 5 that, I'm not sure about all the
 6 cases.
 7 BY MR. PLACITELLA:
 8 Q. Okay. Remember I asked you
 9 about hundreds of cases before. This looks
 10 like thousands of cases, no?
 11 A. Well, you can add them up, it
 12 looks like it's maybe just a little under a
 13 thousand.
 14 Q. Okay. And what happened to the
 15 files in the Adkins and the Akers case for
 16 the 700 people?
 17 A. Well, it would have been one
 18 file for us.
 19 Q. Okay. Where is that file?
 20 A. Like I said, I don't know.
 21 Q. What did you do with it when
 22 the case was over?
 23 MS. BROWN: Objection.
 24 THE WITNESS: I didn't

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1 do anything with it.
 2 BY MR. PLACITELLA:
 3 Q. Well, what happened to it?
 4 MS. BROWN: Asked and
 5 answered.
 6 THE WITNESS: I don't
 7 know if I was even responsible for
 8 it. I don't know.
 9 BY MR. PLACITELLA:
 10 Q. Okay. And by the way, if I go
 11 to 1042, I don't know if you have to pull
 12 it from your book, do you see that this is
 13 the actual dismissal of the Andonian and
 14 Miller case?
 15 A. I can't see the whole thing,
 16 but I take your word for it, sure.
 17 MS. BROWN: It's 1042 in
 18 book two?
 19 - - - - -
 20 (Dismissal Order marked
 21 O'Shaughnessy Exhibit 1042 for
 22 identification.)
 23 - - - - -
 24

<p style="text-align: right;">Page 516</p> <p>1 BY MR. PLACITELLA: 2 Q. Right. And that was after you 3 submitted the affidavit saying there's no 4 evidence of asbestos, right? 5 MS. BROWN: Lacks 6 foundation. Assumes facts. 7 THE WITNESS: I'm not 8 seeing the name of the case. It 9 says Ohio asbestos litigation -- 10 BY MR. PLACITELLA: 11 Q. Yeah, do you see the docket 12 numbers, if you match them up. Here, I'll 13 do it -- 14 A. I'll take your word for it. 15 MS. BROWN: Lacks 16 foundation. 17 BY MR. PLACITELLA: 18 Q. Well, I can match them up and 19 spend the time or I can -- 20 MS. BROWN: Lacks 21 foundation. 22 MR. PLACITELLA: -- play 23 match up. Okay. I'll tell you 24 that.</p>	<p style="text-align: right;">Page 518</p> <p>1 let's go to Exhibit 195. And do you know 2 whether, before you look at that, do you 3 know whether any of those testing documents 4 were reviewed by the scientists that you 5 relied upon before Miller submitted those 6 affidavits? 7 MS. BROWN: Objection, 8 lacks foundation, vague. 9 THE WITNESS: I don't 10 have personal knowledge. I just 11 know the practice of the company 12 was to send out testing and to 13 review the results, if that was 14 your question. 15 - - - - - 16 (Affidavit of William H. Ashton 17 marked O'Shaughnessy Exhibit 195 18 for identification.) 19 - - - - - 20 BY MR. PLACITELLA: 21 Q. Actually, my question was -- 22 well, let me ask you a different question. 23 Do you know whether Mr. Miller reviewed any 24 of those testing documents to your right</p>
<p style="text-align: right;">Page 517</p> <p>1 MS. BROWN: With this 2 witness, it lacks foundation. 3 BY MR. PLACITELLA: 4 Q. Okay. Now, in any of the 5 cases, this under 1,000 cases that were 6 pending in 1989, do you have any evidence, 7 as you sit here today, that any of the 8 testing documents to your right were turned 9 over in those cases? 10 MS. BROWN: I object. 11 It assumes facts that they were 12 requested and lacks foundation with 13 this witness. 14 THE WITNESS: Like I 15 said before, I don't know the state 16 of discovery of these cases. Some 17 of them at least I'm pretty sure I 18 was not handling at the time. So I 19 don't know whether or not anything 20 was turned over or if in fact 21 anything was requested to be turned 22 over. 23 BY MR. PLACITELLA: 24 Q. Okay. Let's go to Exhibit --</p>	<p style="text-align: right;">Page 519</p> <p>1 before he signed those affidavits and 2 submitted them to courts and counsel? 3 MS. BROWN: Foundation, 4 speculation. 5 THE WITNESS: I don't 6 know exactly what he reviewed, but 7 he would have reviewed -- I mean, 8 you showed me some documents where 9 he did look at the testing. 10 BY MR. PLACITELLA: 11 Q. Okay. Now, let's go to 195. 12 195 is an affidavit -- by the way, you 13 testified, I think the last time, that 14 William Ashton was somebody that you relied 15 upon heavily when you made statements that 16 there's no evidence of asbestos in Vermont 17 talc, right? 18 A. He was one of the people we 19 relied on, among others, including, you 20 know, the people I mentioned and I said 21 including other people at the company that 22 our attorneys would interview. 23 Q. So the answer is yes? 24 MS. BROWN: Asked and</p>

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1 answered.

2 THE WITNESS: He was one

3 of the people relied on. You said

4 heavily, you know, I can't weigh

5 them.

6 BY MR. PLACITELLA:

7 Q. And he's dead now, right?

8 A. I believe Mr. Ashton is dead.

9 Q. Now, this affidavit from

10 Mr. Ashton dated -- I'm trying to find the

11 date of the affidavit. Give me a second

12 here. May 8, 1989, do you see that? It's

13 on 195.8.

14 A. Yes, yes.

15 Q. You know about this affidavit,

16 right?

17 A. I do recognize it, yes.

18 Q. This is an affidavit you

19 personally worked on?

20 A. Yes.

21 Q. All right. And Mr. Ashton in

22 his affidavit starts out with his

23 background in working for Johnson &

24 Johnson, correct?

Page 521

1 A. Yes.

2 Q. Okay. And in his affidavit,

3 Mr. Ashton states unequivocally "From the

4 1940s through the 1980s, talc mined in

5 Vermont." Do you see that?

6 A. Yes.

7 Q. "And specifically, the talc

8 mined by Engelhard Corporation and its

9 predecessors." Do you see that?

10 A. Yes.

11 Q. The predecessor was Johnson &

12 Johnson, right?

13 MS. BROWN: Objection.

14 THE WITNESS: The

15 predecessor was the -- I forget the

16 corporate name, whether it was

17 Windsor Minerals or something else,

18 but we were one of the predecessor

19 companies that owned the Johnson

20 mine.

21 BY MR. PLACITELLA:

22 Q. You owned the Johnson mine and

23 then you sold it to Engelhard?

24 A. Yes.

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1 Q. "From the talc mine located in

2 Johnson Vermont, the Johnson mine has been

3 considered to be talc free from

4 contamination by asbestos."

5 A. Yes.

6 Q. Did I read that correctly?

7 A. Yes.

8 Q. And what was the factual basis

9 for that? Where did the facts come for

10 that statement?

11 A. It follows in the affidavit.

12 The remainder of the affidavit states what

13 he relied on.

14 Q. Okay. And attached to the

15 affidavit are all kinds of exhibits,

16 correct?

17 A. There were studies, et cetera,

18 attached, yeah.

19 Q. Okay. Who was involved in

20 preparing this affidavit?

21 MS. BROWN: I object and

22 instruct Mr. O'Shaughnessy not to

23 answer that question. This

24 affidavit was prepared in

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1 connection with litigation and that

2 information is privileged.

3 JUDGE SCHNEIDER: I'm

4 thinking. Can you please read back

5 the last two questions and answers?

6 - - - - -

7 (Whereupon, the reporter read

8 back as requested.)

9 - - - - -

10 JUDGE SCHNEIDER: I

11 thought that question I was already

12 asked and answered, didn't he say

13 that he testified that, I don't

14 know the exact words, but the

15 record will reflect whether --

16 MR. PLACITELLA: He said

17 he was involved.

18 JUDGE SCHNEIDER: He

19 assisted --

20 MR. PLACITELLA: Right.

21 Who else, who else was involved?

22 JUDGE SCHNEIDER: The

23 door is open. He can answer the

24 question. Was anyone else involved

Page 524

1 except him?

2 MR. PLACITELLA: You can

3 answer that.

4 THE WITNESS: Yeah,

5 there were attorneys for the

6 Engelhard Corporation.

7 BY MR. PLACITELLA:

8 Q. Right. They were not lawyers

9 working for Johnson & Johnson, correct?

10 A. No, they were not.

11 Q. Right. And what happened, the

12 back story is that they threatened to sue

13 Johnson & Johnson for selling them a pig in

14 a poke with the Johnson mine, right?

15 MS. BROWN: I object to

16 the form of that question as

17 argumentative, misstating the

18 evidence, and assuming facts.

19 THE WITNESS: They

20 threatened a lawsuit against

21 Johnson & Johnson for exposures to

22 talc mined from the Johnson &

23 Johnson mine at the time it was

24 owned by Johnson & Johnson and

Page 525

1 before. So it probably --

2 BY MR. PLACITELLA:

3 Q. Correct.

4 A. Yeah.

5 Q. And as a result of that threat,

6 you got together with the lawyers from

7 Engelhard and helped prepare this affidavit

8 in order to deal with the cases, right?

9 MS. BROWN: I object.

10 Lacks foundation.

11 THE WITNESS: What we

12 did was we participated in this

13 affidavit and Mr. Ashton wrote the

14 affidavit to protect Johnson &

15 Johnson's interests.

16 BY MR. PLACITELLA:

17 Q. Okay. Now, and so if we can go

18 back -- by the way, can you go to

19 Exhibit 1039, I'm assuming it's in book

20 two. And I'm looking specifically at

21 1039.12.

22 MS. BROWN: Counsel, can

23 you identify for the record what

24 this is?

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1 MR. PLACITELLA: Yes,

2 it's an excerpt from the Johnson &

3 Johnson privilege log.

4 - - - -

5 (Excerpt for J&J Privilege Log

6 marked O'Shaughnessy Exhibit 1039

7 for identification.)

8 - - - -

9 MS. BROWN: I object.

10 Lacks foundation.

11 MR. PLACITELLA: I'm not

12 going to ask privileged questions,

13 I'm just going to ask about

14 people --

15 MS. BROWN: Same

16 objection.

17 MR. PLACITELLA: -- as

18 identified on the log. You got it?

19 MS. BROWN: Same

20 objection.

21 THE WITNESS: Yeah.

22 BY MR. PLACITELLA:

23 Q. Do you see 5/5/1989 and it

24 lists Ira Dembrow, William Ashton, John

Page 527

1 O'Shaughnessy, and Howard Sloane?

2 A. Yes.

3 Q. They were people who worked on

4 the affidavit, right?

5 A. I remember working on it with

6 Mr. Dembrow.

7 Q. Right. And do you see where

8 your description says "memorandum with

9 attachment" and it refers directly to baby

10 powder litigation?

11 MS. BROWN: I object.

12 Lacks foundation. Misstates the

13 document and vague.

14 MR. PLACITELLA: Well,

15 it says "Memorandum with attachment

16 prepared by counsel pursuant to

17 pending and anticipated litigation

18 regarding baby powder litigation."

19 THE WITNESS: I see

20 that. I do.

21 BY MR. PLACITELLA:

22 Q. So Johnson & Johnson has listed

23 this affidavit as relevant to baby powder

24 litigation. Do you see that?

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1 MS. BROWN: No, that
2 assumes facts and misstates the
3 document and lacks foundation.
4 THE WITNESS: No, this
5 is a description in the privilege
6 log.
7 BY MR. PLACITELLA:
8 Q. Okay.
9 A. That's all it is.
10 Q. Oh, that's all. Didn't
11 somebody take care in putting this log
12 together?
13 A. You would hope so, but
14 oftentimes, maybe a description of a
15 document is not totally accurate. I'm not
16 sure this isn't, I'm just saying --
17 Q. Well, I'm skipping down to
18 another entry, 5/5/1989, that also lists
19 Johnson's Baby Powder as relevant to this
20 affidavit, correct?
21 A. Yeah and see --
22 MS. BROWN: No, hang on
23 a second. That misstates the
24 document and lacks foundation and

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1 assumes facts.
2 THE WITNESS: I'm sorry.
3 I've never seen this, but I'm
4 looking at all sorts of different
5 descriptions. It says talc
6 litigation, anticipated talc
7 litigation, baby powder litigation,
8 so it describes it in a number of
9 different ways.
10 BY MR. PLACITELLA:
11 Q. Okay. And on the date that the
12 affidavit was signed, 5/18/1989, there's an
13 entry from Ira Dembrow to you and Ashton
14 listing specifically that the affidavit
15 relates to Johnson's Baby Powder
16 litigation, correct?
17 MS. BROWN: Foundation,
18 speculation, misstates the
19 documents and assumes facts.
20 THE WITNESS: I'm not
21 sure which, it's like 25 boxes
22 here. I'm trying to figure out --
23 BY MR. PLACITELLA:
24 Q. I'm looking at the very last

Page 530

1 one.
2 A. On the page?
3 Q. Yes. I have blown up --
4 MS. BROWN: I can't even
5 see it. There's an exhibit
6 sticker.
7 BY MR. PLACITELLA:
8 Q. Here I'll blow it up.
9 A. That's better, which one?
10 Q. Do you see that?
11 MS. BROWN: For the
12 record, I can't tell from this, can
13 you identify when this privilege
14 log was served and the date of it?
15 MR. PLACITELLA: I have
16 to tell you, I can go back and do
17 it, but you've served so many
18 versions of these logs, it's hard
19 to keep track of.
20 MS. BROWN: Well, I want
21 to make sure --
22 MR. PLACITELLA: They
23 change every other week.
24 MS. BROWN: I want to

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1 make sure we're looking at the --
2 MR. PLACITELLA: I think
3 your entries are still the same if
4 you go back and look at the one you
5 sent, like, a couple of weeks ago.
6 MS. BROWN: Okay. If
7 you could just, it doesn't have to
8 be now, but if we can identify what
9 we're looking at for the record,
10 that would be great. Thank you.
11 BY MR. PLACITELLA:
12 Q. Okay. So you see 5/18/89, the
13 date the affidavit was signed, you list
14 Johnson's Baby Powder litigation?
15 A. I think you're mixing two
16 things. And maybe you're not. So if you
17 mind, so 5/18/89 is the date the affidavit
18 was signed. And so I think that appears on
19 this, because that's the date of the
20 document, right, I believe. And yeah, if
21 you go to the right on any of those, you
22 know, it makes different statements, but
23 the one you highlighted says Johnson's Baby
24 Powder litigation.

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1 Q. Okay. Fair enough. And I just
 2 want to look at this group. If you keep
 3 looking at the screen.
 4 A. Sure.
 5 Q. Listed as people who worked on
 6 this included from Johnson & Johnson
 7 yourself, Mr. Ashton, and Bruce Semple,
 8 correct?
 9 MS. BROWN: Foundation,
 10 speculation. Misstates the
 11 document.
 12 THE WITNESS: It lists
 13 people. I don't know where they
 14 got Bruce Semple's name on it. I
 15 don't recall him having anything to
 16 do with the affidavit.
 17 BY MR. PLACITELLA:
 18 Q. Well, that's what's listed on
 19 your --
 20 A. It's listed on this privilege
 21 log once.
 22 Q. And he was the medical director
 23 of Johnson & Johnson, right?
 24 A. He was.

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1 Q. At any time, at any time, did
 2 Mr. Ashton, Mr. Semple or anybody else who
 3 you said you relied upon tell you that the
 4 information in this affidavit is false?
 5 MS. BROWN: Assumes
 6 facts, misstates the evidence,
 7 lacks foundation.
 8 THE WITNESS: Never.
 9 BY MR. PLACITELLA:
 10 Q. Okay. So you understand that
 11 this affidavit was used by Johnson &
 12 Johnson to try to extricate itself from
 13 talc litigation pending at the time the
 14 affidavit was executed, correct?
 15 MS. BROWN: Assumes
 16 facts, misstates the evidence,
 17 lacks foundation.
 18 THE WITNESS: Yeah, that
 19 was one of the purposes of the
 20 affidavit, yes.
 21 BY MR. PLACITELLA:
 22 Q. Okay. Now, in the affidavit,
 23 if you go to -- give me one second here.
 24 If you go to 195.59, do you see that it's

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1 in the same affidavit?
 2 A. I'm on the way. I'm there.
 3 Q. Okay. One of the things that
 4 you attach is testimony from your expert in
 5 the Westfall case, correct, Alfred
 6 Chidester?
 7 A. Yes, I think so.
 8 Q. And in fact, if you go to the
 9 next page, you can see the direct
 10 examination of Mr. Chidester by your
 11 lawyer, right?
 12 A. Yes.
 13 Q. Okay. Now --
 14 A. And just as a qualification,
 15 this was before I was at Johnson & Johnson.
 16 It's 1983.
 17 Q. I understand.
 18 A. But I do know that he was the
 19 lawyer for Johnson & Johnson.
 20 Q. All right. And you're familiar
 21 with the Westfall case?
 22 A. I know of it, yes. I'm not
 23 intimately familiar with it. I think it
 24 was over by the time I started.

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1 Q. It was, sir. But I'm asking
 2 the questions because in support for the
 3 proposition for the affidavit that there's
 4 no asbestos in Vermont talc, you attached
 5 testimony from the Westfall case, we agree?
 6 A. Yes.
 7 MS. BROWN: That
 8 misstates the evidence.
 9 BY MR. PLACITELLA:
 10 Q. Okay. So and were you aware
 11 that Mr. Miller, who you relied upon, also
 12 testified in the Westfall case?
 13 A. I don't recall if I knew that
 14 or not.
 15 Q. Can you go to Exhibit 172 in
 16 the transcript binder.
 17 MS. BROWN: I think it's
 18 these, John.
 19 BY MR. PLACITELLA:
 20 Q. And 172 --
 21 A. I see that.
 22 Q. -- is the deposition in the
 23 Westfall case of Glenn Hemstock. Do you
 24 see that?

<p style="text-align: right;">Page 536</p> <p>1 MS. BROWN: Object to 2 the document as lacking foundation. 3 ----- 4 (Deposition of Glenn A. 5 Hemstock dated 1/28/83 marked 6 O'Shaughnessy Exhibit 172 for 7 identification.) 8 ----- 9 BY MR. PLACITELLA: 10 Q. I'm going to lay a foundation. 11 Do you see that? 12 A. Yes. 13 Q. Okay. And do you see that on 14 the second page appearing at that 15 deposition is the general counsel for 16 Johnson & Johnson. Do you see that? 17 A. No. 18 Q. Do you see 172.3? 19 A. Yes. 20 Q. Look at the bottom. 21 A. Oh, I see. That's a typo, Mr. 22 Beidler was not general counsel. 23 Q. He worked for Johnson & Johnson 24 as in-house counsel, right?</p>	<p style="text-align: right;">Page 538</p> <p>1 dismiss your case, we're going to seek 2 sanctions under the frivolous lawsuit 3 statute. That's what the letter said, 4 right? 5 MS. BROWN: Again, it 6 misstates the document and lacks 7 foundation. 8 THE WITNESS: I don't 9 think he said it. He did mention 10 the rule that you spoke about. 11 BY MR. PLACITELLA: 12 Q. Okay. Now, can you go to 173, 13 please; in the transcript binder, the 14 second day of Mr. Hemstock's deposition? 15 A. Okay. 16 ----- 17 (Deposition of Glenn A. 18 Hemstock dated 3/16/83 marked 19 O'Shaughnessy Exhibit 173 for 20 identification.) 21 ----- 22 BY MR. PLACITELLA: 23 Q. And can you go to 173.23? 24 A. Yes.</p>
<p style="text-align: right;">Page 537</p> <p>1 MS. BROWN: Hold on, his 2 mic is off. 3 MR. PLACITELLA: He 4 worked -- 5 THE WITNESS: He was in 6 the Johnson & Johnson law 7 department. 8 BY MR. PLACITELLA: 9 Q. And also present was the 10 Johnson & Johnson local lawyer. Do you see 11 that? 12 A. From Nutter McClennen & Fish. 13 Q. And this is the same Mr. 14 Beidler who threatened Mr. Grayzel in 1987 15 with sanctions, correct? 16 MS. BROWN: That 17 misstates the document and lacks 18 foundation. I object. 19 THE WITNESS: I don't 20 think he threatened anyone. 21 BY MR. PLACITELLA: 22 Q. He's the one that wrote 23 Mr. Grayzel a letter saying there's no 24 evidence whatsoever and if you don't</p>	<p style="text-align: right;">Page 539</p> <p>1 Q. Okay. It says now, and this is 2 Dr. Hemstock, he's the chief scientist at 3 Engelhard, did you know that? 4 MS. BROWN: Lacks 5 foundation. 6 THE WITNESS: I don't 7 know who he is. 8 BY MR. PLACITELLA: 9 Q. Did you know his testimony was 10 actually quoted by the Third Circuit in a 11 reported decision while you were there? 12 MS. BROWN: Oh my 13 goodness. Hold on a second. I 14 object. This lacks foundation. 15 And, Judge, further to our 16 discussion yesterday, I do want to 17 raise that we are down a rabbit 18 hole with another litigation 19 regarding industrial talc that was 20 never used in Johnson's Baby 21 Powder. We are showing -- 22 MR. PLACITELLA: Excuse 23 me, that's a speaking objection and 24 can we have the witness leave the</p>

<p style="text-align: right;">Page 540</p> <p>1 room if we're going to do this?</p> <p>2 MS. BROWN: Sure.</p> <p>3 Thanks, John.</p> <p>4 JUDGE SCHNEIDER: Maybe</p> <p>5 close the door, Mr. O'Shaughnessy.</p> <p>6 MS. BROWN: Thank you.</p> <p>7 Your Honor, further to</p> <p>8 our discussion yesterday, I do want</p> <p>9 to raise an objection. We are now</p> <p>10 nearly two hours into this</p> <p>11 deposition and the majority of</p> <p>12 questioning and certainly within</p> <p>13 the last half hour has dealt with</p> <p>14 the Engelhard litigation, which, of</p> <p>15 course, Mr. Placitella is</p> <p>16 intimately familiar with. But what</p> <p>17 we are doing is showing this</p> <p>18 witness other people's testimony in</p> <p>19 that case. This involves the</p> <p>20 Johnson mine, which was never used</p> <p>21 in Johnson's Baby Powder.</p> <p>22 MR. PLACITELLA: Are you</p> <p>23 sure about that?</p> <p>24 MS. BROWN: The most</p>	<p style="text-align: right;">Page 542</p> <p>1 do that first?</p> <p>2 MR. PLACITELLA: -- but</p> <p>3 I don't want to spend the time</p> <p>4 doing that now.</p> <p>5 JUDGE SCHNEIDER:</p> <p>6 Counsel, for discovery purposes,</p> <p>7 it's unquestionably the case that</p> <p>8 this is a relevant area of inquiry.</p> <p>9 Mr. Placitella is directing his</p> <p>10 questioning to the accuracy of</p> <p>11 affidavits and statements made by</p> <p>12 Johnson & Johnson regarding the</p> <p>13 presence of asbestos in talc. He's</p> <p>14 attempting to show that there was,</p> <p>15 whether it's true or not, it's not</p> <p>16 for me to decide, but it's plain to</p> <p>17 me, he's directing his questions to</p> <p>18 try and prove that there's factual</p> <p>19 evidence that is inconsistent with</p> <p>20 representations made by Johnson &</p> <p>21 Johnson in affidavits that there</p> <p>22 was no asbestos in its talc.</p> <p>23 Ultimately, the trial</p> <p>24 judge is going to decide whether</p>
<p style="text-align: right;">Page 541</p> <p>1 recent question to the witness is</p> <p>2 asking if he's familiar with the</p> <p>3 fact that this testimony was cited</p> <p>4 in the Third Circuit decision about</p> <p>5 BASS. And so I do want to appeal</p> <p>6 to Your Honor pursuant to our</p> <p>7 discussion yesterday that this has</p> <p>8 nothing to do with ovarian cancer</p> <p>9 and nothing to do with Johnson's</p> <p>10 Baby Powder. And so, you know, I</p> <p>11 respectfully submit we are wasting</p> <p>12 time here.</p> <p>13 MR. PLACITELLA: It has</p> <p>14 everything to do with Johnson's</p> <p>15 Baby Powder. It has everything to</p> <p>16 do with his statements about who he</p> <p>17 relied upon. Their own log says it</p> <p>18 relates directly to Johnson's Baby</p> <p>19 Powder. And if they ask those</p> <p>20 questions on their direct, I will</p> <p>21 prove that it relates to Johnson's</p> <p>22 Baby Powder with their own</p> <p>23 documents --</p> <p>24 MS. BROWN: Shouldn't we</p>	<p style="text-align: right;">Page 543</p> <p>1 this is admissible evidence at</p> <p>2 trial, but for discovery purposes,</p> <p>3 under Rule 26, it's plainly a</p> <p>4 relevant area of inquiry. And to</p> <p>5 the extent there's a request to</p> <p>6 limit or bar Mr. Placitella from</p> <p>7 directing his questions to this</p> <p>8 area of inquiry, it's denied. Of</p> <p>9 course, all of your objections to</p> <p>10 the admissibility of this evidence</p> <p>11 at trial is preserved. That's not</p> <p>12 my role. But for discovery</p> <p>13 purposes, it's unquestionably</p> <p>14 relevant.</p> <p>15 MS. BROWN: Understood.</p> <p>16 JUDGE SCHNEIDER: If he</p> <p>17 doesn't know the answer to the</p> <p>18 question, Mr. O'Shaughnessy is</p> <p>19 perfectly capable of saying he</p> <p>20 doesn't know the answer.</p> <p>21 MS. BROWN: Understood.</p> <p>22 MR. PLACITELLA: Okay.</p> <p>23 MS. BROWN: Thank you.</p> <p>24</p>

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1 BY MR. PLACITELLA:
2 Q. Okay. I'm going to withdraw
3 the last question and ask another question.
4 I want to read the testimony for you from
5 Dr. Hemstock, the lead scientist.
6 "Now, you testified that your
7 department has tested both processed talc
8 and raw talc ore from the Emtal mine for
9 the presence of chrysotile asbestos; is
10 that correct?"
11 Answer: "Yes."
12 "Has your department in its
13 research found chrysotile asbestos in both
14 processed talc and raw ore from the Emtal
15 mine?"
16 Do you see that?
17 Answer: "Yes."
18 Do you see that?
19 A. Yes.
20 Q. Did anybody in the Johnson &
21 Johnson law department, including Mr.
22 Beidler, tell you about this testimony
23 before you submitted doctor -- Mr. Ashton's
24 affidavit?

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1 MS. BROWN: I object.
2 It misstates the evidence and lacks
3 foundation. And is an incomplete
4 reading from this deposition.
5 THE WITNESS: No, and I
6 wouldn't expect him to.
7 BY MR. PLACITELLA:
8 Q. Okay. What about Mr. Ashton
9 who worked on the Westfall case, did he
10 tell you about the testimony from the chief
11 scientist that said they found asbestos in
12 the talc that he said was asbestos free?
13 MS. BROWN: It misstates
14 the evidence. Lacks foundation.
15 THE WITNESS: I don't
16 recall any conversations one way or
17 the other on this.
18 BY MR. PLACITELLA:
19 Q. Okay.
20 A. I don't recall this at all.
21 Q. Okay. Well, Mr. Ashton, who is
22 unfortunately gone, he was one of the
23 people that you relied upon to tell you the
24 truth, right?

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1 A. Absolutely.
2 Q. Okay. And what about the
3 medical director, Bruce Semple, did you
4 know he worked on the Westfall case?
5 MS. BROWN: Objection,
6 assumes facts.
7 THE WITNESS: That
8 doesn't sound familiar to me, but
9 you know, this is a long time ago
10 and before I was there even, so I
11 wouldn't know.
12 BY MR. PLACITELLA:
13 Q. Okay. Did Bruce Semple tell
14 you anything about this testimony?
15 MS. BROWN: Objection,
16 assumes facts.
17 THE WITNESS: I don't
18 recall that.
19 BY MR. PLACITELLA:
20 Q. Okay. Now, go to J&J 436.
21 MS. BROWN: Not in the
22 testimony binder, right?
23 MR. PLACITELLA: It's in
24 the testimony binder.

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1 MS. BROWN: Do I have a
2 copy of these transcripts?
3 MR. PLACITELLA: Yes,
4 you do.
5 MS. BROWN: Okay. Thank
6 you.
7 MR. PLACITELLA: There's
8 a copy behind you as well.
9 THE WITNESS: I have it.
10 MS. BROWN: And what
11 number were we just on?
12 THE WITNESS: We're on
13 436. I don't know what we were on
14 now.
15 MS. BROWN: Chris, what
16 was the previous transcript number
17 in this binder?
18 MR. PLACITELLA: It was
19 172 and 173.
20 MS. BROWN: Thank you.
21 - - - - -
22 (Deposition of Peter N. Gale
23 dated 4/26/83 marked O'Shaughnessy
24 Exhibit 436 for identification.)

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1 - - - - -

2 BY MR. PLACITELLA:

3 Q. By the way, you didn't attach

4 the Hemstock transcript to the Ashton

5 affidavit, did you?

6 MS. BROWN: Assumes

7 facts.

8 THE WITNESS: It wasn't

9 attached. We attached what

10 Mr. Ashton wanted to rely on.

11 BY MR. PLACITELLA:

12 Q. So my question -- the answer is

13 no, you never attached the Hemstock

14 transcript?

15 A. It was not attached to that

16 transcript.

17 Q. Okay. Now, you have before you

18 436, which is the deposition of Peter Gale.

19 Do you see that?

20 A. I do.

21 Q. Taken in the Westfall case. Do

22 you see that?

23 A. Yup.

24 Q. Okay. And if you look at the

Page 549

1 436.2?

2 A. Yes.

3 Q. You will see that Windsor

4 Minerals was present at this deposition as

5 well, correct? For the defendant, Windsor

6 Minerals, Brian T. Kenner.

7 A. Yes, I see that.

8 Q. Okay. And also on the bottom

9 is Howard Sloane. Do you see that?

10 A. Yes.

11 Q. He's one of the people who

12 helped you work on the affidavit, right?

13 A. I don't recall dealing with him

14 on the affidavit. I recall Mr. Dembrow.

15 Q. And they work for the same law

16 firm?

17 A. They did.

18 Q. Okay. And if you go to -- and

19 did you know that Mr. Gale was the

20 mineralogist that worked for Engelhard?

21 A. I don't know that.

22 Q. Okay. If you go to 436.19. Do

23 you see where Mr. Gale talks about taking

24 samples from the Johnson mine?

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1 A. No.

2 Q. Look at page 436.19.

3 A. Okay.

4 Q. Line 7.

5 A. Samples from the Johnson mine.

6 Q. Right. And he says the

7 question is "What analysis did you run on

8 the second round of studies?" Do you see

9 that?

10 A. Yes, I do.

11 Q. And there's some objection and

12 then it says, "The Witness: Scanning

13 electron microscopy, transmission electron

14 microscopy, selected area electric

15 diffraction." Do you see that?

16 A. Yes.

17 Q. And it says "Where did you

18 perform those tests?"

19 Answer: "Georgia Tech."

20 Question: "When those tests

21 were performed -- when were those tests

22 performed?

23 "Late fall of '78 and January

24 and February of '79 I believe.

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1 "Do you recall today what

2 those tests revealed?" Do you see that?

3 A. Yes.

4 Q. "I recall that there were

5 fibers found in those," go to the next

6 page, "talcs, yes.

7 "Did you identify the nature,

8 mineralogic nature of the fibers that were

9 found?"

10 Answer: "Yes.

11 "What was the nature of those

12 fibers?

13 "I determined those fibers

14 were chrysotile fibers."

15 Question: "How did you

16 determine those were -- those fibers were

17 chrysotile fibers?"

18 Answer: "Using selected area

19 electron diffraction in conjunction with

20 transmission electron microscopy."

21 Do you see that?

22 MS. BROWN: All of this

23 lacks foundation.

24

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1 BY MR. PLACITELLA:
2 Q. Do you see that?
3 A. I see it.
4 Q. Is this the first time you ever
5 saw this?
6 A. Yes.
7 Q. So Mr. Ashton never shared this
8 with you?
9 A. I don't even know if he had it.
10 MS. BROWN: Lacks
11 foundation. Assumes facts.
12 BY MR. PLACITELLA:
13 Q. Okay. Nobody at Johnson &
14 Johnson shared this with you, correct?
15 MS. BROWN: Lacks
16 foundation.
17 THE WITNESS: I never
18 saw it before.
19 BY MR. PLACITELLA:
20 Q. And it's not attached to the
21 affidavit that attaches other transcripts
22 from the Westfall case, is it?
23 A. I think the only attachment of
24 a transcript was Dr. Chidester.

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1 Q. Right.
2 A. Chidester.
3 Q. Right.
4 A. That's the only one.
5 Q. You didn't attach the Gale
6 transcript where he reports asbestos in the
7 mine to the Ashton affidavit, correct?
8 MS. BROWN: Misstates,
9 facts. Lacks foundation.
10 THE WITNESS: It wasn't
11 and I know that it's 1978 also --
12 BY MR. PLACITELLA:
13 Q. Okay.
14 A. -- we're talking about here.
15 Q. So after --
16 A. After Johnson & Johnson owned
17 the mine.
18 Q. After these people testified
19 that they found asbestos in the mine, what
20 happened in that case, do you know?
21 MS. BROWN: Lacks
22 foundation.
23 THE WITNESS: I don't
24 know.

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1 MS. BROWN: Assumes
2 facts.
3 THE WITNESS: I don't
4 know.
5 BY MR. PLACITELLA:
6 Q. Okay. Can you look at 441.
7 MR. COX: Which binder,
8 I'm sorry?
9 MR. PLACITELLA: I think
10 it's in binder two.
11 MR. COX: Okay. Not the
12 transcripts.
13 MR. PLACITELLA: No.
14 THE WITNESS: Can I put
15 the transcripts away?
16 BY MR. PLACITELLA:
17 Q. Yes.
18 A. Thank you.
19 MS. BROWN: Do you want
20 mine?
21 THE WITNESS: I'm
22 finally at it.
23 - - - - -
24 (Stipulation and

Page 555

1 Confidentiality Order marked
2 O'Shaughnessy Exhibit 441 for
3 identification.)
4 - - - - -
5 BY MR. PLACITELLA:
6 Q. 441 is a stipulation and
7 confidentiality order entered into in the
8 Westfall case. Do you see that?
9 A. I see it, yes.
10 MS. BROWN: I object.
11 Lacks foundation.
12 BY MR. PLACITELLA:
13 Q. Okay. And if you go to the
14 last page, which was 441.7.
15 A. Yes.
16 Q. You see it was signed off on by
17 your lawyers. Do you see that?
18 A. It's signed by, yeah, another
19 McClennen & Fish lawyer.
20 Q. And what the confidentiality
21 order provided, if you go to 441.5, is that
22 at the conclusion of the case, the
23 plaintiff's lawyer had to return all the
24 evidence, right?

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1 MS. BROWN: Objection.
2 Lacks foundation.
3 THE WITNESS: It says
4 "at the conclusion," that one?
5 BY MR. PLACITELLA:
6 Q. Yes, sir.
7 A. Well, this one says at the
8 conclusion, all documents subject shall be
9 returned to Cahill Gordon, to Cahill
10 Gordon.
11 Q. Right. And did you know that
12 the depositions and all the testing
13 documents were returned to Cahill Gordon
14 and never saw the light of day?
15 MS. BROWN: That assumes
16 facts and lacks foundation.
17 THE WITNESS: This is
18 1983. I have no familiarity with
19 any of that.
20 BY MR. PLACITELLA:
21 Q. No one ever told you that
22 Johnson & Johnson entered into a
23 confidentiality order in the Westfall case
24 to keep the evidence in that case secret?

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1 MS. BROWN: That
2 misstates the facts and lacks
3 foundation.
4 THE WITNESS: I might
5 have been aware, you know, going
6 back in time that Westfall was a
7 case that was -- I don't know what
8 happened to it, if there was a
9 Stipulation of Dismissal, so it was
10 either settled or dismissed. But I
11 wouldn't have any knowledge over,
12 you know, what happened to
13 particular documents, especially
14 concerning a client that wasn't
15 Johnson & Johnson.
16 BY MR. PLACITELLA:
17 Q. Well, Windsor Minerals was you?
18 A. Engelhard --
19 Q. No, no.
20 A. Cahill Gordon didn't represent
21 Johnson & Johnson.
22 Q. But you signed the
23 confidentiality order that says all the
24 documents have to go back to Cahill Gordon?

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1 A. I wasn't even at the company at
2 the time.
3 MR. PLACITELLA: I
4 object.
5 THE WITNESS: I'm
6 talking about me too.
7 MS. BROWN: That
8 misstates the document.
9 THE WITNESS: I'm
10 talking about me too. I didn't
11 sign this. I wasn't even at the
12 company.
13 BY MR. PLACITELLA:
14 Q. Yeah, one of your lawyers
15 signed it though, right?
16 MS. BROWN: Misstates
17 the evidence.
18 THE WITNESS: A lawyer
19 signed this agreement --
20 BY MR. PLACITELLA:
21 Q. One of the Johnson & Johnson
22 lawyers signed the confidentiality order
23 that they knew that at the end of the case
24 the evidence was going to be returned never

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1 to see the light of day, right?
2 MS. BROWN: That's
3 argumentative and misstates the
4 document and lacks foundation.
5 THE WITNESS: No, as I
6 read it and, again, I'm
7 interpreting a document I had
8 nothing to do with or the
9 Stipulation of Dismissal or
10 whatever agreements the parties
11 came to, but you're asking me about
12 the behavior of the party
13 represented by Cahill Gordon.
14 BY MR. PLACITELLA:
15 Q. No, I'm asking about Johnson &
16 Johnson, sir.
17 A. I'm sorry, I don't see anything
18 in here about Johnson & Johnson.
19 Q. Well, when you and Mr. Ashton
20 put your affidavit together, and cited the
21 Westfall transcripts, you didn't also
22 produce at that time any of the testing or
23 any of the testimony showing that
24 unequivocally, there was asbestos in that

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1 mine, correct?
 2 MS. BROWN: That
 3 misstates the evidence and that
 4 lacks foundation.
 5 BY MR. PLACITELLA:
 6 Q. You can answer it.
 7 A. Mr. Ashton submitted the
 8 Ashton -- the Chidester testimony to
 9 support his affidavit with respect to his
 10 knowledge of that mine, the Johnson mine.
 11 Q. How sad.
 12 MS. BROWN: What?
 13 MR. PLACITELLA: No, how
 14 sad. Don't you agree?
 15 MS. BROWN: How sad, is
 16 that what you just said? Hold on,
 17 hold on. I object.
 18 MR. PLACITELLA: Don't
 19 you agree, how sad?
 20 MS. BROWN: No, no, do
 21 not answer that. This is
 22 argumentative.
 23 BY MR. PLACITELLA:
 24 Q. Okay. We'll go to the next

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1 question. That affidavit that you put
 2 together was sent to plaintiffs' lawyers
 3 across the country to try to get them to
 4 get -- dismiss their cases, correct?
 5 MS. BROWN: Objection,
 6 argumentative, assumes facts, lacks
 7 foundation.
 8 THE WITNESS: It was
 9 used to obtain dismissals in cases
 10 that Johnson & Johnson had some
 11 liability for, potential liability
 12 for. It was used in that fashion,
 13 yes. I don't know how many or
 14 where.
 15 BY MR. PLACITELLA:
 16 Q. You even sent a copy or you
 17 were aware that a copy of the affidavit was
 18 sent to the chief judge of the federal
 19 court in charge of all the cases nationwide
 20 and cited for the proposition that there
 21 was no evidence. Did you know that?
 22 A. No, but that wouldn't --
 23 MS. BROWN: Objection,
 24 lacks foundation.

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1 THE WITNESS: No, I
 2 don't know exactly who sent it,
 3 but.
 4 BY MR. PLACITELLA:
 5 Q. That there was no evidence of
 6 asbestos in that mine. Did you know that
 7 the chief judge for all the cases in the
 8 United States got a copy of that affidavit?
 9 MS. BROWN: Lacks
 10 foundation. Misstates the
 11 evidence.
 12 THE WITNESS: I don't --
 13 you asked me three questions there.
 14 BY MR. PLACITELLA:
 15 Q. That's one question.
 16 A. I'm going to respond to the
 17 last one, do I know if the federal judge
 18 had a copy of the affidavit. I don't know
 19 that. If he did, he did.
 20 Q. Can you go to Exhibit 1040. It
 21 should be in book two.
 22 Exhibit 1040 is an August 14,
 23 19 -- it looks like '89 or August 15, 1989,
 24 letter to Judge Weiner. Do you see that?

Page 563

1 MS. BROWN: It looks
 2 like '88 and I object.
 3 MR. PLACITELLA: It's
 4 hard to tell.
 5 MS. BROWN: It's
 6 impossible to read. I object. It
 7 lacks foundation.
 8 - - - - -
 9 (Letter dated 8/14/89 marked
 10 O'Shaughnessy Exhibit 1040 for
 11 identification.)
 12 - - - - -
 13 BY MR. PLACITELLA:
 14 Q. Do you see that?
 15 A. I see it, but I can't read the
 16 date.
 17 MS. BROWN: No one can
 18 read this.
 19 BY MR. PLACITELLA:
 20 Q. Is your recollection at the
 21 time that you were defending cases that
 22 Judge Weiner, who was in Philadelphia, was
 23 in charge for the entire MDL for asbestos
 24 cases?

<p style="text-align: right;">Page 564</p> <p>1 A. I don't recall that.</p> <p>2 Q. And go to the second page,</p> <p>3 please. And I'm going to blow it up,</p> <p>4 because it's hard to read. Do you see</p> <p>5 where it says "By letter dated May 17,</p> <p>6 1989, we provided plaintiffs' counsel with</p> <p>7 such report, the affidavit of William H.</p> <p>8 Ashton who has been involved in</p> <p>9 investigating and studying talc for over 35</p> <p>10 years"?</p> <p>11 A. I see that, yeah.</p> <p>12 Q. Do you see that and it says</p> <p>13 "Mr. Ashton concludes our client's talc did</p> <p>14 not contain asbestos," right?</p> <p>15 MS. BROWN: This whole</p> <p>16 document lacks foundation.</p> <p>17 THE WITNESS: That's</p> <p>18 what it says. The Ashton affidavit</p> <p>19 though speaks for itself.</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. In all the cases that you</p> <p>22 defended related to the Johnson mine, did</p> <p>23 you ever turn over any of the documents</p> <p>24 from the Westfall case?</p>	<p style="text-align: right;">Page 566</p> <p>1 446.111. I just blew up there --</p> <p>2 it says --</p> <p>3 MS. BROWN: Hold on, let</p> <p>4 him get there.</p> <p>5 THE WITNESS: Let me</p> <p>6 just go there, please. 446.11?</p> <p>7 MS. BROWN: 111.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. 111.</p> <p>10 A. I'm sorry. Okay. I have it.</p> <p>11 Q. Do you see where it says</p> <p>12 "Engelhard asserts that Windsor is</p> <p>13 responsible for any liability due to</p> <p>14 exposure provided." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So it was part of the</p> <p>17 agreement. Do you see that?</p> <p>18 MS. BROWN: What about</p> <p>19 the next sentence.</p> <p>20 THE WITNESS: What do</p> <p>21 you mean?</p> <p>22 MS. BROWN: Can we read</p> <p>23 what goes on to the --</p> <p>24</p>
<p style="text-align: right;">Page 565</p> <p>1 MS. BROWN: Objection,</p> <p>2 lacks foundation. Misstates the</p> <p>3 evidence.</p> <p>4 THE WITNESS: I don't</p> <p>5 know what was turned over in the</p> <p>6 individual case.</p> <p>7 BY MR. PLACITELLA:</p> <p>8 Q. When Cyprus purchased the mines</p> <p>9 from you and the liabilities from you, did</p> <p>10 you tell them about the evidence from the</p> <p>11 Westfall case?</p> <p>12 MS. BROWN: Objection,</p> <p>13 vague, lacks foundation.</p> <p>14 THE WITNESS: The</p> <p>15 Johnson mine, I believe, was not</p> <p>16 part of the sale to Cyprus.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. Okay. So can we go back to</p> <p>19 that Cyprus agreement for a second. That's</p> <p>20 Exhibit I, I put up on the --</p> <p>21 MS. BROWN: What's the</p> <p>22 number, Chris?</p> <p>23 MR. PLACITELLA:</p> <p>24 446.111. And it's page, it's at</p>	<p style="text-align: right;">Page 567</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. "To the rubber and tire</p> <p>3 industry by Eastern Magnesia Talc prior to</p> <p>4 July 24, 1967." Do you see that?</p> <p>5 MS. BROWN: Right, but</p> <p>6 the next question. I object to</p> <p>7 this --</p> <p>8 THE WITNESS: I don't</p> <p>9 know what the question is.</p> <p>10 MR. PLACITELLA: Did I</p> <p>11 read that correct so far?</p> <p>12 THE WITNESS: I'm sorry</p> <p>13 to do this, but can you do it</p> <p>14 again.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. Yeah, no problem. It talks</p> <p>17 here about Engelhard asserting that Windsor</p> <p>18 is responsible for --</p> <p>19 A. Yes, I see it. I'm sorry.</p> <p>20 Q. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. So let's go to the next page.</p> <p>23 And the actions pending that were part of</p> <p>24 the subject of this agreement --</p>

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1 MS. BROWN: I mean, can
2 we just --
3 BY MR. PLACITELLA:
4 Q. It says "The actions pending
5 against Engelhard and/or EMTC as of
6 December 14, 1988 are as follows." Do you
7 see that?
8 THE WITNESS: I do.
9 MS. BROWN: I object.
10 BY MR. PLACITELLA:
11 Q. And it lists 1800 separate
12 cases. Do you see that?
13 MS. BROWN: I object to
14 the sentence you left out. This is
15 intentionally misleading.
16 MR. PLACITELLA: I'm not
17 trying to mislead anybody. You can
18 do whatever you need to do.
19 MS. BROWN: Can you
20 read the complete -- you skipped
21 over --
22 BY MR. PLACITELLA:
23 Q. "Responsibility for the
24 aforementioned liability is currently

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1 disputed by Windsor." Oh, okay. That's
2 because they didn't tell anybody anything.
3 Okay. So then it says "The actions pending
4 against Engelhard and/or EMTC as of
5 December 14, 1988 are as follows." Do you
6 see that?
7 A. Yes.
8 Q. And then you list 1800 separate
9 cases, right?
10 MS. BROWN: Lacks
11 foundation. All this lacks
12 foundation.
13 THE WITNESS: That's the
14 total number of plaintiffs.
15 BY MR. PLACITELLA:
16 Q. You submitted that Ashton
17 affidavit to dismiss the cases of 1800
18 different people, didn't you?
19 MS. BROWN: No, that
20 misstates the evidence and lacks
21 foundation.
22 THE WITNESS: I don't
23 recall how many, but I know it was
24 used to obtain dismissals in cases.

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1 BY MR. PLACITELLA:
2 Q. Okay. And what happened to
3 those files? The 1800 people, what
4 happened to those files?
5 A. You say 1800 people?
6 Q. It says total 1827.
7 A. Can I finish, can I just
8 finish?
9 Q. Sure.
10 A. And it says total number of
11 actions 467. So what I think, these
12 complaints, and I'm trying to remember, but
13 in these asbestos complaints, there would
14 often be complaints, I think, as you
15 mentioned before, with hundreds of people
16 in the complaint against scores of
17 companies.
18 Q. Right.
19 A. And so the liability here that
20 we were getting caught up in was about
21 that.
22 Q. I understand.
23 A. Now you're asking me for files
24 on these. I don't know if we had files on

Page 571

1 them, because our liability here was going
2 to be through Engelhard, so they might have
3 had actual files. I don't believe we had
4 all files. Certainly, if J&J was named as
5 a defendant, we would have some file around
6 that.
7 Q. Well, you know they were
8 named -- I mean, I can show them to you,
9 but you know they were named directly as
10 defendants in the case, right?
11 MS. BROWN: That
12 misstates the evidence.
13 THE WITNESS: I know in
14 some cases, they were not, but it,
15 you know, has been so long since I
16 looked at this.
17 BY MR. PLACITELLA:
18 Q. Who is "they"?
19 A. Johnson & Johnson.
20 Q. Okay. So let me turn the page
21 here. Well, let me ask a question. I see
22 you guys talking. Do you want, how do you
23 want to handle --
24 MS. BROWN: Lunch.

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1 MR. PLACITELLA: -- the
 2 logistics here? Do you want to go
 3 to 12:30 and then break,
 4 12:00 o'clock? What do you want to
 5 do?
 6 MS. BROWN: I think we
 7 should go to 12:00 and take a lunch
 8 break, so you have 13 minutes.
 9 BY MR. PLACITELLA:
 10 Q. Okay. Well, put me on a clock.
 11 You worked on a case called Ritter. Do you
 12 recall that?
 13 A. I recall that.
 14 Q. Okay. And you worked on that
 15 case with Mr. Ashton. Do you recall that?
 16 A. I don't recall, but that's
 17 entirely possible.
 18 Q. Okay. And can you go -- I
 19 think you were shown this last week, but
 20 can you go to Exhibit 1035. I'm sorry.
 21 Let me, yeah, 1035. 1035, for the record,
 22 is a January 3, 1995, letter from Laurie
 23 Bain of McCrone Environmental Services to
 24 you. Do you see that?

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1 A. Yes.
 2 - - - - -
 3 (Letter dated 1/3/95 marked
 4 O'Shaughnessy Exhibit 1035 for
 5 identification.)
 6 - - - - -
 7 BY MR. PLACITELLA:
 8 Q. Okay. And the re: up in the
 9 right-hand corner is Ritter. Do you see
 10 that?
 11 A. Yes.
 12 Q. Okay. And in that letter, what
 13 McCrone did was they said they gave you a
 14 copy of their entire file?
 15 A. Yes.
 16 Q. Do you see that?
 17 A. Yes.
 18 Q. Did you read it when you got
 19 it?
 20 A. I probably did, yeah.
 21 Q. Okay. And what happened to
 22 that file?
 23 A. I don't have any specific
 24 recollection, but what would have happened

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1 is I would have turned it over to our
 2 attorneys for Ritter and Mr. Williams as
 3 well.
 4 Q. Okay. And in the context of
 5 the Ritter case, you learned that the
 6 McCrone reports that you received reported
 7 asbestos in the Johnson & Johnson mines,
 8 correct?
 9 A. No.
 10 MS. BROWN: Objection.
 11 Misstates the evidence. What is
 12 the -- and vague as to the Johnson
 13 & Johnson mines.
 14 BY MR. PLACITELLA:
 15 Q. The Johnson & Johnson talc.
 16 MS. BROWN: Same
 17 objection.
 18 THE WITNESS: No is the
 19 answer.
 20 BY MR. PLACITELLA:
 21 Q. Okay. And you also learned
 22 during the course of the Ritter case that
 23 when you were mining the talc from the
 24 Johnson mine, there was no way in heaven

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1 you could avoid mining the tremolite in the
 2 mine at the same time, correct?
 3 MS. BROWN: Assumes
 4 facts, misstates the evidence,
 5 lacks foundation.
 6 THE WITNESS: When you
 7 say "you," I assume you mean the
 8 Johnson & Johnson people?
 9 BY MR. PLACITELLA:
 10 Q. Yes, sir.
 11 A. No, no, I don't recall.
 12 Q. Okay. Who is Barry Doolan?
 13 A. Barry Doolan was a geologist, I
 14 believe, with the University of Vermont.
 15 Q. Okay. And he is someone that
 16 you consulted during the course of the
 17 Ritter case?
 18 A. He was a litigation consultant,
 19 yes.
 20 Q. And can you go to 1055, please.
 21 MS. BROWN: Your Honor,
 22 this is a privileged document. Can
 23 we have a moment?
 24 JUDGE SCHNEIDER: You

<p>Page 576</p> <p>1 want to go --</p> <p>2 MS. BROWN: Can I confer</p> <p>3 with my co-counsel? This appears</p> <p>4 on its face to me to be a</p> <p>5 privileged document that I just</p> <p>6 want to find out if it has been</p> <p>7 clawed back.</p> <p>8 JUDGE SCHNEIDER: Sure.</p> <p>9 MS. BROWN: Thanks.</p> <p>10 MR. PLACITELLA: Well,</p> <p>11 no one sent any clause my way.</p> <p>12 MS. BROWN: Let's go off</p> <p>13 for a second.</p> <p>14 THE VIDEOGRAPHER: Off</p> <p>15 the record 11:51.</p> <p>16 - - - - -</p> <p>17 (Discussion was held off the record.)</p> <p>18 - - - - -</p> <p>19 MR. PLACITELLA: So this</p> <p>20 document does have J&J Bates</p> <p>21 numbers on it. It was in the</p> <p>22 packet that Mr. Block submitted</p> <p>23 with his deposition that you've had</p> <p>24 now for a week and it contradicts</p> <p>Page 577</p> <p>1 what the witness just said. It</p> <p>2 clearly contradicts what the</p> <p>3 witness just said.</p> <p>4 JUDGE SCHNEIDER: First,</p> <p>5 let's find out. Is there an</p> <p>6 objection to the use of this</p> <p>7 exhibit?</p> <p>8 MS. BROWN: Yes.</p> <p>9 MR. BERNARDO: Yes. And</p> <p>10 to explain, it was our</p> <p>11 understanding that we were not to</p> <p>12 advance and look at the documents</p> <p>13 that were not being used and this</p> <p>14 was not one of the documents being</p> <p>15 used, so I did not go through the</p> <p>16 binder to ascertain. I will say</p> <p>17 that as I was going through another</p> <p>18 one, I do recall opening and</p> <p>19 thinking, I think this is a</p> <p>20 document to recall, but I</p> <p>21 intentionally followed</p> <p>22 instructions --</p> <p>23 JUDGE SCHNEIDER: In</p> <p>24 fairness, that was the right thing</p>	<p>Page 578</p> <p>1 to do.</p> <p>2 MR. BERNARDO: Right.</p> <p>3 JUDGE SCHNEIDER: You're</p> <p>4 not going to be blamed for that.</p> <p>5 MR. BERNARDO: And I</p> <p>6 will explain what I think is</p> <p>7 appropriate to put on the record</p> <p>8 and then, Your Honor, if you</p> <p>9 require additional information as</p> <p>10 we did during the privilege</p> <p>11 hearing, there were other, say,</p> <p>12 privilege facts I can explain to</p> <p>13 Your Honor that would further</p> <p>14 explain this, but let me state at a</p> <p>15 very high level things that I'm</p> <p>16 comfortable saying on the record.</p> <p>17 This was not a document</p> <p>18 produced by Johnson & Johnson in</p> <p>19 its document production. This is a</p> <p>20 document that I, having looked at</p> <p>21 it now, do recall several years ago</p> <p>22 learning that there was some</p> <p>23 inadvertent disclosure of it, but</p> <p>24 based upon what we learned and</p> <p>Page 579</p> <p>1 understood, we were under the</p> <p>2 impression that it never made its</p> <p>3 way out to plaintiffs' counsel or</p> <p>4 wouldn't otherwise be in</p> <p>5 plaintiffs' counsel's hands.</p> <p>6 Obviously, we were wrong in that</p> <p>7 investigation and understanding.</p> <p>8 So we didn't see a need to claw it</p> <p>9 back, because it was our</p> <p>10 impression, based upon facts I can</p> <p>11 be happy to tell you, that it had</p> <p>12 never been disclosed. The</p> <p>13 document, I've just confirmed with</p> <p>14 Mr. Fine, continues to be on our</p> <p>15 privilege log. I actually asked</p> <p>16 him, Your Honor, if it was among</p> <p>17 the documents that are being</p> <p>18 challenged and I haven't received</p> <p>19 an answer of that yet.</p> <p>20 JUDGE SCHNEIDER: Not in</p> <p>21 the federal MDL?</p> <p>22 MR. BERNARDO: It may be</p> <p>23 among Mr. Block's, it may be as</p> <p>24 part of the larger group, that's</p>
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<p style="text-align: right;">Page 580</p> <p>1 why the binder --</p> <p>2 JUDGE SCHNEIDER: The</p> <p>3 156 documents?</p> <p>4 MR. BERNARDO: Yeah, I</p> <p>5 confirmed, it's not among those.</p> <p>6 So, again, Your Honor, I would be</p> <p>7 happy to provide additional details</p> <p>8 that would sort of substantiate the</p> <p>9 top line information I provided.</p> <p>10 JUDGE SCHNEIDER: Are</p> <p>11 you at liberty to say who did</p> <p>12 produce this document?</p> <p>13 MR. BERNARDO: I would</p> <p>14 rather disclose that --</p> <p>15 MS. BROWN: I wouldn't</p> <p>16 even say produced, Judge. It was</p> <p>17 never produced. There is a</p> <p>18 situation where the document was --</p> <p>19 MR. BERNARDO: I would</p> <p>20 rather --</p> <p>21 MR. PLACITELLA: I can</p> <p>22 leave the room.</p> <p>23 JUDGE SCHNEIDER: Before</p> <p>24 you leave, I have a question.</p>	<p style="text-align: right;">Page 582</p> <p>1 were not at all responsive, some of</p> <p>2 which are withheld on the basis of</p> <p>3 privilege. That was an internal</p> <p>4 way of just tracking documents.</p> <p>5 Some of the documents that have</p> <p>6 that designation are in the</p> <p>7 production. This goes back more</p> <p>8 than a decade, and again, Your</p> <p>9 Honor, this goes in part with</p> <p>10 something I explained the other</p> <p>11 day, but I'm very comfortable in</p> <p>12 saying that not every document that</p> <p>13 has that on it was produced, number</p> <p>14 one. And number two, as Plaintiffs</p> <p>15 probably know, most documents that</p> <p>16 have that designation also have</p> <p>17 another number on it.</p> <p>18 JUDGE SCHNEIDER: That</p> <p>19 appears to be a different format</p> <p>20 from at least one other J&J Bates</p> <p>21 number, which is J, the letter N,</p> <p>22 J.</p> <p>23 MR. TISI: Yeah, but</p> <p>24 we've had -- if I can just weigh in</p>
<p style="text-align: right;">Page 581</p> <p>1 MR. BERNARDO: Sure.</p> <p>2 MR. PLACITELLA: I would</p> <p>3 rather not leave, but I can leave.</p> <p>4 MR. TISI: It does have</p> <p>5 a J&J Bates number.</p> <p>6 MR. PLACITELLA: It does</p> <p>7 have a J&J Bates number.</p> <p>8 MS. BROWN: No.</p> <p>9 MR. BERNARDO: No, no,</p> <p>10 it doesn't. It has an internal J</p> <p>11 ampersand J on it, right?</p> <p>12 MR. TISI: We can look</p> <p>13 at it right here. We can give you</p> <p>14 the number.</p> <p>15 MR. PLACITELLA: I can</p> <p>16 put it up if you want.</p> <p>17 JUDGE SCHNEIDER: I</p> <p>18 would like to see it.</p> <p>19 MR. BERNARDO: Right.</p> <p>20 So I can state with certainty,</p> <p>21 because I personally investigated</p> <p>22 that J ampersand J reflects an</p> <p>23 endorsement that was put on a large</p> <p>24 swath of materials, some of which</p>	<p style="text-align: right;">Page 583</p> <p>1 on that.</p> <p>2 JUDGE SCHNEIDER: Sure.</p> <p>3 MR. TISI: As I think</p> <p>4 Mr. Bernardo explained last time</p> <p>5 and, again, I'm just saying this as</p> <p>6 a matter of fact. When they were</p> <p>7 originally produced in the initial</p> <p>8 state litigation, Mr. Bernardo, I</p> <p>9 don't think was even involved in</p> <p>10 the production at that point.</p> <p>11 There was another firm involved in</p> <p>12 the production. There was a</p> <p>13 production of documents that had</p> <p>14 different Bates numbers. Over</p> <p>15 time, as that number grew, as the</p> <p>16 number of documents grew, we had a</p> <p>17 big fight in the MDL about, you</p> <p>18 know, the number of documents</p> <p>19 produced and it went from, you</p> <p>20 know, 36,000 to hundreds of</p> <p>21 thousands of documents. I mean, it</p> <p>22 grew over time and I think when Mr.</p> <p>23 Bernardo became involved, and</p> <p>24 you'll correct me if I'm wrong, the</p>

<p>Page 584</p> <p>1 numbers changed. So some of these</p> <p>2 documents have different, multiple</p> <p>3 different Bates numbers over time,</p> <p>4 because of the way in which they</p> <p>5 were produced originally in an</p> <p>6 individual state litigation,</p> <p>7 actually, starting in South Dakota,</p> <p>8 and then expanded over time and I</p> <p>9 think that they used different</p> <p>10 systems. It has been confusing to</p> <p>11 us, candidly, because we never know</p> <p>12 which Bates number to use when</p> <p>13 we're referring to it. But the</p> <p>14 fact that this is in a different</p> <p>15 format, Judge, and this is all I'm</p> <p>16 going to say, the fact that this is</p> <p>17 isn't a different format doesn't</p> <p>18 raise any red flags to me, because</p> <p>19 some of these documents have four</p> <p>20 or five different Bates numbers on</p> <p>21 it because they were produced under</p> <p>22 different circumstances in</p> <p>23 different litigations. Does that</p> <p>24 make sense?</p>	<p>Page 586</p> <p>1 accept whatever you say. I'm not</p> <p>2 fighting with you over it. I got</p> <p>3 it. It was in Jerry's packet. I</p> <p>4 read it. I used it. But here's</p> <p>5 the problem. The witness has said</p> <p>6 that he never learned this</p> <p>7 information during the course of</p> <p>8 the case or from Doolan.</p>
<p>Page 585</p> <p>1 JUDGE SCHNEIDER: Fair</p> <p>2 enough.</p> <p>3 MR. BERNARDO: And I</p> <p>4 completely agree with what Mr. Tisi</p> <p>5 said. I'm making the point simply</p> <p>6 that not every document that has</p> <p>7 that designation was a document</p> <p>8 that was intended to be produced.</p> <p>9 Some of those are on the privilege</p> <p>10 log. Some of those were deemed to</p> <p>11 be completely not responsive to</p> <p>12 anything. So --</p> <p>13 MR. TISI: And some of</p> <p>14 them have been produced.</p> <p>15 MR. BERNARDO:</p> <p>16 Absolutely, Chris, I'm agreeing</p> <p>17 with you. I'm simply saying that</p> <p>18 that does not indicate that it was</p> <p>19 produced. That's my only --</p> <p>20 MR. PLACITELLA: Here's</p> <p>21 where we are.</p> <p>22 MR. BERNARDO: Excuse</p> <p>23 me?</p> <p>24 MR. PLACITELLA: I</p>	<p>Page 587</p>

<p style="text-align: right;">Page 588</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 590</p> <p>1 procedurally doing this by the</p> <p>2 books, because I can expect, I'm</p> <p>3 not saying that I'm anticipating</p> <p>4 Judge Schneider is going to rule</p> <p>5 against us, but if he does, I can</p> <p>6 anticipate that this might be</p> <p>7 something we would want to appeal.</p> <p>8 This is a very important issue,</p> <p>9 it's a threshold issue, and I just</p> <p>10 want to make sure we're creating an</p> <p>11 appropriate record --</p> <p>12 MR. TISI: I just want</p> <p>13 to make sure when you say the word</p> <p>14 "privilege," I think we have to</p> <p>15 indicate, because one privilege is</p> <p>16 much more absolute than another</p> <p>17 privilege. I want to make sure</p> <p>18 when you say "privilege," what</p> <p>19 we're actually talking about.</p> <p>20 MR. PLACITELLA: Yeah,</p> <p>21 so if we're stepping through the</p> <p>22 paces trying to do what you're</p> <p>23 saying, okay, you want a ruling</p> <p>24 whether it's privileged or not --</p>
<p style="text-align: right;">Page 589</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 MR. BERNARDO: Chris, my</p> <p>8 only point is, procedurally, I feel</p> <p>9 like we need a ruling so we can</p> <p>10 decide what that is and decide</p> <p>11 whether we appeal it or not on</p> <p>12 whether this is or isn't</p> <p>13 privileged. If it is and it's work</p> <p>14 product and that's what the judge</p> <p>15 decides, you can make that</p> <p>16 argument. Although, I don't think</p> <p>17 you're supposed to be making</p> <p>18 arguments based upon the actual</p> <p>19 content of an otherwise privileged</p> <p>20 document. I really --</p> <p>21 MR. TISI: No, I hear</p> <p>22 you --</p> <p>23 MR. BERNARDO: I just</p> <p>24 want to make sure we're</p>	<p style="text-align: right;">Page 591</p> <p>1 MR. BERNARDO: Work</p> <p>2 product --</p> <p>3 MR. PLACITELLA: Work</p> <p>4 product privilege --</p> <p>5 THE STENOGRAPHER: One</p> <p>6 at a time. Okay.</p> <p>7 MR. BERNARDO: I first</p> <p>8 want a ruling as to whether or not</p> <p>9 this document should even be in</p> <p>10 your hands, because it was -- look,</p> <p>11 if the ruling is that we waived</p> <p>12 whatever we asserted, then we go to</p> <p>13 the next step.</p> <p>14 JUDGE SCHNEIDER: Can I</p> <p>15 ask a question?</p> <p>16 MR. BERNARDO: Sure.</p> <p>17 JUDGE SCHNEIDER: I</p> <p>18 think you're right. I think we</p> <p>19 have to decide if it's work product</p> <p>20 or not. And then we have the other</p> <p>21 issue about whether there's a</p> <p>22 substantial need for it and whether</p> <p>23 you can rely on content of a work</p> <p>24 product document to prove</p>

<p style="text-align: right;">Page 592</p> <p>1 substantial need.</p> <p>2 MR. BERNARDO: Which</p> <p>3 under the federal rules, you</p> <p>4 cannot.</p> <p>5 JUDGE SCHNEIDER: Yeah,</p> <p>6 I don't have a case at my</p> <p>7 fingertips, but it doesn't --</p> <p>8 MR. BERNARDO: I'll get</p> <p>9 you one.</p> <p>10 JUDGE SCHNEIDER: I</p> <p>11 don't know, but here's the question</p> <p>12 I have --</p> <p>13 MR. PLACITELLA: Well,</p> <p>14 there's one more piece of the</p> <p>15 analysis. I would rather not go</p> <p>16 there.</p> <p>17 JUDGE SCHNEIDER: I</p> <p>18 would just like to get your</p> <p>19 representation. Is it your</p> <p>20 representation that it wasn't until</p> <p>21 Jerry Block's binder that you</p> <p>22 realized that this document was in</p> <p>23 Johnson & Johnson's -- Plaintiffs'</p> <p>24 exhibits?</p>	<p style="text-align: right;">Page 594</p> <p>1 MR. PLACITELLA: First</p> <p>2 of all, I don't know that --</p> <p>3 MR. TISI: Well, that's</p> <p>4 what I understand.</p> <p>5 MR. PLACITELLA: I don't</p> <p>6 know that.</p> <p>7 JUDGE SCHNEIDER: Isn't</p> <p>8 that a critical question --</p> <p>9 MR. PLACITELLA: I don't</p> <p>10 know that. So I just want to back</p> <p>11 up for a second before we --</p> <p>12 JUDGE SCHNEIDER: When</p> <p>13 you say it was in the normal</p> <p>14 course, Chris, do you mean by J&J</p> <p>15 or somebody else?</p> <p>16 MR. TISI: It would only</p> <p>17 come from J&J. But the other</p> <p>18 question that I have, and let me</p> <p>19 double check, because I don't</p> <p>20 know where else we would have</p> <p>21 gotten it --</p> <p>22 MR. BERNARDO: And to be</p> <p>23 honest, I did not reconfirm that,</p> <p>24 which I can do --</p>
<p style="text-align: right;">Page 593</p> <p>1 MS. BROWN: Yes.</p> <p>2 MR. BERNARDO: Correct,</p> <p>3 it was my understanding and</p> <p>4 impression when we did our</p> <p>5 investigation of circumstances when</p> <p>6 this first came to my attention</p> <p>7 several years ago that it never</p> <p>8 made its way out there. We took</p> <p>9 appropriate steps to avoid it from</p> <p>10 even getting there.</p> <p>11 JUDGE SCHNEIDER: Maybe</p> <p>12 we need to have an ex parte</p> <p>13 conversation too, without revealing</p> <p>14 the answer, do you know how this</p> <p>15 document came to be in your hands</p> <p>16 other than --</p> <p>17 MR. TISI: It was in the</p> <p>18 production. It was in the</p> <p>19 production of documents.</p> <p>20 JUDGE SCHNEIDER: What</p> <p>21 production of documents?</p> <p>22 MR. TISI: The regular,</p> <p>23 the normal in the course of</p> <p>24 business production of documents.</p>	<p style="text-align: right;">Page 595</p> <p>1 MR. TISI: Let me go</p> <p>2 check.</p> <p>3 MR. BERNARDO: We spent</p> <p>4 significant time --</p> <p>5 MR. TISI: Let me go and</p> <p>6 check.</p> <p>7 MR. BERNARDO: I think</p> <p>8 it might just help and we can</p> <p>9 probably figure out where they got</p> <p>10 it if we can have a very brief ex</p> <p>11 parte and then we have one with</p> <p>12 them --</p> <p>13 MR. TISI: But let me</p> <p>14 ask one question. When you --</p> <p>15 MR. PLACITELLA: You can</p> <p>16 read between the lines where I got</p> <p>17 it. I'm not --</p> <p>18 MR. BERNARDO: I think I</p> <p>19 can figure it out.</p> <p>20 MR. TISI: But let me</p> <p>21 ask you one question. When you</p> <p>22 inadvertently realized that it was</p> <p>23 in the binder or whatever you -- I</p> <p>24 think you had indicated it was</p>

<p style="text-align: right;">Page 596</p> <p>1 inadvertent. You didn't go back 2 and look any further -- 3 MR. BERNARDO: Chris, I 4 didn't write down the date. I 5 didn't do anything. It was one of 6 those under the rules, you see 7 something, you realize -- 8 MR. TISI: I totally get 9 it. I totally get it -- 10 THE STENOGRAPHER: You 11 know what, I can't take this. I 12 cannot take this back and forth, 13 because you're not going to get a 14 record. 15 MR. BERNARDO: I 16 apologize. 17 MR. TISI: And I totally 18 understand that. My question is, 19 did you recognize that this 20 document, even if you don't go any 21 further, at some earlier point was 22 in our hands? 23 MS. BROWN: No. 24 MR. TISI: Okay. That</p>	<p style="text-align: right;">Page 598</p> <p>1 have a privileged document and we 2 said, oh, my goodness, we're not 3 supposed to be looking ahead in the 4 binder. So we knew that there was 5 a suggestion there might be a 6 privileged document in there. 7 MR. TISI: But you 8 didn't know which one? 9 MS. BROWN: No, because 10 I instructed her, she told me tab 11 24. So I know -- I suspect it was 12 tab 24 and we both said to her, you 13 are not supposed to look ahead, so 14 that's where we left it. 15 MR. BERNARDO: Maybe I'm 16 the last lawyer who does this, but 17 I, genuinely, when I get something 18 and realize I'm not supposed to 19 have it -- 20 MR. TISI: I'm with you. 21 I don't do it either. You and I 22 have had this discussion. 23 MS. BROWN: And that's 24 how we knew, and we took steps</p>
<p style="text-align: right;">Page 597</p> <p>1 was my question. 2 MR. BERNARDO: My 3 representation and maybe you can 4 prove me wrong -- 5 MR. TISI: I'm not 6 trying to prove you wrong. 7 MR. BERNARDO: No, no, I 8 know you're not. I'm just giving 9 you the benefit of the doubt. 10 JUDGE SCHNEIDER: But at 11 the earliest, it was a week ago, 12 right? 13 MR. TISI: Well, we know 14 at least a week ago, right, at 15 least, I think that's what I'm 16 asking is, you know, if you had a 17 week to claw it back and you knew 18 for either advertent or 19 inadvertent, why is it now we're a 20 week later? 21 MS. BROWN: Well, I can 22 tell you this, because these 23 binders also went to an associate 24 who saw it and raised with us they</p>	<p style="text-align: right;">Page 599</p> <p>1 pursuant to what was asked of us -- 2 JUDGE SCHNEIDER: I 3 don't think that's a concern -- 4 MR. TISI: It's not a 5 concern on my part either. You're 6 an honorable person. 7 JUDGE SCHNEIDER: I 8 credit -- I credit that they closed 9 the book after a fleeting 10 reference, but Chris, I would like 11 to know if you can document that 12 J&J produced that, because that 13 might be the answer to this. 14 MR. BERNARDO: And if it 15 is, it is. I mean -- 16 JUDGE SCHNEIDER: If J&J 17 produced it -- 18 MR. TISI: Let me see if 19 I can check right now, but what I'm 20 concerned about, Judge, and this is 21 an important issue, right, and it's 22 in the flow of Chris' deposition, 23 from just a practical standpoint, 24 we're eating up time that we want</p>

Page 600	Page 602
<p>1 to -- you know, you were very 2 concerned about time and I don't 3 want to prejudice us in getting 4 through this examination. 5 JUDGE SCHNEIDER: Let's 6 do this -- 7 MR. PLACITELLA: Well, 8 I'm going to take you at your word. 9 You don't need to prove anything to 10 me. Okay. Let them figure out, 11 you know. So I don't know that you 12 want to -- you need ex parte, if 13 you think you do, you do. If you 14 say it is, it is. Okay. That's 15 how I see the world, you know. 16 Because our lives are way too long 17 to go up and eat the sheets on 18 that. 19 JUDGE SCHNEIDER: You 20 meant to say way too short. 21 MR. PLACITELLA: 22 Unfortunately, we're all -- 23 MR. BERNARDO: I agree 24 with everything you said up to</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
Page 601	Page 603
<p>1 there, Chris. 2 - - - - - 3 (Discussion was held off the record.) 4 - - - - - 5 (Sealed Portion of Transcript.) 6 - - - - - 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>----- (Whereupon, sealed portion of transcript concluded.) ----- (A recess was taken at this time.) ----- JUDGE SCHNEIDER: This is Special Master Schneider, Judge Schneider, before our lunch break, an issue came up about a particular document. It's claimed that the document is work product, but there's an issue whether the work product has been waived and there was an inadvertent production.</p>
Page 613	Page 615
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>After speaking ex parte with defense counsel, and I could represent we only talked about privileged information, and talking with Plaintiffs' counsel, it's my determination that the record is not complete enough to make an informed decision as to whether this document should be used, so we're going to table the use of this document for purposes of this deposition. At the conclusion of the deposition, or shortly thereafter, we'll discuss with counsel a briefing schedule and get a determinative ruling on the issue, but for purposes of this afternoon, this document will not be used. And this is for the record Exhibit J&J 1055.1. MR. PLACITELLA: Could I add something just so that there's no missteps? There was certain argument under seal. So, Robin,</p>

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1 before you send the transcript out
2 to anybody else, including me,
3 could you send it to Alli and Rich
4 only so they can make sure that
5 it's appropriately -- whatever
6 needs to be done.
7 MS. BROWN: Thank you.
8 MR. PLACITELLA: I don't
9 want it to be inadvertent.
10 MS. BROWN: That's
11 great.
12 MR. PLACITELLA: We have
13 enough inadvertence.
14 MS. BROWN: Yeah,
15 thanks, Chris, I appreciate that.
16 MR. TISI: We would
17 agree to that.
18 THE VIDEOGRAPHER: We
19 are back on the record at 1:23 p.m.
20 BY MR. PLACITELLA:
21 Q. All right. I thought I was
22 doing great on time, but I'm going to try
23 to make up some of it so this could be your
24 last day.

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1 A. Thanks a lot.
2 Q. I'm trying. Remember we just
3 went over the document where they sent you
4 the McCrone file? McCrone sent you their
5 entire file.
6 A. Leslie Bain or something, yes.
7 Q. Yes. What happened to that
8 file?
9 A. I would have given the
10 documents to our lawyers, our outside
11 counsel.
12 Q. Who would that be?
13 A. If that was under the Ritter
14 case, it would have been to Ritter and to
15 Gene Williams as well.
16 Q. Okay. Now, I mentioned
17 Professor Doolan, is he dead or alive?
18 A. I don't know.
19 Q. In the Ritter case, you
20 defended Mr. Miller's deposition, correct?
21 A. I don't recall, but if you say
22 so.
23 Q. Okay. If you look at 1043 in
24 your transcript binder. I want to put it

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1 up on the screen. This is the deposition
2 of Roger Miller, April 6, 1995. Do you see
3 that?
4 A. Yes, I see it.
5 -----
6 (Deposition Of Roger N. Miller
7 dated 4/6/95 marked O'Shaughnessy
8 Exhibit 1043 for identification.)
9 -----
10 BY MR. PLACITELLA:
11 Q. And do you see on the second
12 page of the deposition you're listed as
13 counsel?
14 A. I am.
15 Q. Okay. So you're actually
16 participating in this dep, correct?
17 A. The transcript will show. I
18 don't recall.
19 Q. And in this deposition, if you
20 go to 26, it's 1043.26.
21 A. Yes.
22 Q. Mr. Miller is asked "And is
23 there any fiber material in the talc that
24 Windsor Minerals has sold over the years

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1 since you have been with the Windsor
2 Minerals -- with Windsor Minerals?"
3 Answer: "We had no fiber
4 form materials in our product." Do you see
5 that?
6 A. Yes.
7 Q. In the -- what happened to the
8 file from the Ritter case?
9 A. The Johnson & Johnson file?
10 Q. Yeah.
11 A. It would have been, like I
12 said, in the central file room for a period
13 of time and then moved over to outside
14 storage.
15 Q. Okay. And where are all the
16 testing documents, I thought there were --
17 A. I have some below here.
18 Q. Okay. Can you put them back up
19 for a second?
20 A. Sure.
21 Q. That's fine. Just make it so
22 it doesn't fall on you.
23 A. That's what I tried to do.
24 This is Musco 2.

<p style="text-align: right;">Page 620</p> <p>1 Q. Yeah, that's right.</p> <p>2 A. Okay.</p> <p>3 Q. Do you have any evidence that</p> <p>4 any of those testing documents in those</p> <p>5 binders to your right were produced in the</p> <p>6 Ritter case?</p> <p>7 MS. BROWN: Objection.</p> <p>8 Assumes facts and lacks foundation.</p> <p>9 THE WITNESS: I have --</p> <p>10 I don't have any specific recall of</p> <p>11 what was produced in the Ritter</p> <p>12 case, but we would have been -- our</p> <p>13 practice would have been to have</p> <p>14 been responsive to discovery</p> <p>15 requests in light of whatever rules</p> <p>16 were present in the court at the</p> <p>17 time and agreements with counsel.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. Well, did you ever claim that</p> <p>20 any of those testing documents were subject</p> <p>21 to -- that they were your trade secrets at</p> <p>22 Johnson & Johnson?</p> <p>23 A. I don't recall positions taken.</p> <p>24 Q. It wouldn't have been a fair</p>	<p style="text-align: right;">Page 622</p> <p>1 mines, that was the same year as the</p> <p>2 citizens' petition that you went over with</p> <p>3 Mr. Tisi yesterday, right?</p> <p>4 A. I assume, you know, I take your</p> <p>5 word for it, but I don't recall.</p> <p>6 Q. And in the citizens' petition,</p> <p>7 the CTFA took the position with Johnson &</p> <p>8 Johnson's input that there was no evidence</p> <p>9 of asbestos in any of the talc products at</p> <p>10 issue, right?</p> <p>11 MS. BROWN: Objection.</p> <p>12 Lacks foundation. Misstates the</p> <p>13 evidence.</p> <p>14 THE WITNESS: That would</p> <p>15 have been our position with respect</p> <p>16 to our own talc.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. Okay.</p> <p>19 A. I'm sorry, Johnson & Johnson's</p> <p>20 talc.</p> <p>21 Q. Now, when you made those</p> <p>22 representations to the FDA -- by the way,</p> <p>23 was that -- Mr. Tisi sent me a note. Was</p> <p>24 that the same year that Mr. -- that Dr.</p>
<p style="text-align: right;">Page 621</p> <p>1 thing to do, to say that those documents</p> <p>2 were trade secrets, do you agree?</p> <p>3 MS. BROWN: Objection.</p> <p>4 Assumes facts. Lacks foundation.</p> <p>5 THE WITNESS: Well,</p> <p>6 you're pointing to three binders</p> <p>7 and I don't know exactly what's in</p> <p>8 all of them. Oftentimes, and I</p> <p>9 can't talk specifically, but</p> <p>10 oftentimes in litigation, trade</p> <p>11 secret is a -- is a type of</p> <p>12 document that we would bring to the</p> <p>13 attention of the court and the</p> <p>14 counsel in discovery. So we may</p> <p>15 denominate something as trade</p> <p>16 secret. And I'm not sure what else</p> <p>17 I can say.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. I'll come back to that.</p> <p>20 A. Okay.</p> <p>21 Q. Just for context, at the same</p> <p>22 time that the Ritter case, that what Roger</p> <p>23 Miller testified under oath that there was</p> <p>24 no minerals, fiber in any of the Windsor</p>	<p style="text-align: right;">Page 623</p> <p>1 Muscat proposed his study?</p> <p>2 A. I don't know.</p> <p>3 MS. BROWN: Objection.</p> <p>4 Lacks foundation.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. Okay. So did you know, because</p> <p>7 you say you rely upon the people at J&J,</p> <p>8 did you know that Johnson & Johnson's never</p> <p>9 gave another -- a testing report to the FDA</p> <p>10 after 1973?</p> <p>11 MS. BROWN: Objection.</p> <p>12 Lacks foundation.</p> <p>13 THE WITNESS: I would</p> <p>14 have no knowledge what the company</p> <p>15 did with respect to its dealings</p> <p>16 with the FDA. You would have to</p> <p>17 ask someone in their regulatory</p> <p>18 group over there.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. Okay. I want to just show you</p> <p>21 the testimony of -- why am I getting no</p> <p>22 sound here?</p> <p>23 THE VIDEOGRAPHER: It's</p> <p>24 super duper low, I hear it, but</p>

<p style="text-align: right;">Page 624</p> <p>1 it's very low.</p> <p>2 MR. PLACITELLA: Why is</p> <p>3 that?</p> <p>4 THE VIDEOGRAPHER: Is</p> <p>5 the volume all the way up?</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. It's all the way up. I'll try</p> <p>8 it one more time, if not, I'm just going to</p> <p>9 have to move on. Do you know who Susan</p> <p>10 Nicholson is?</p> <p>11 A. I do.</p> <p>12 Q. She testified in a deposition</p> <p>13 that no test was provided -- no asbestos</p> <p>14 testing documents were provided to the FDA</p> <p>15 after 1973. Do you have any reason to</p> <p>16 dispute that?</p> <p>17 MS. BROWN: Objection.</p> <p>18 Lacks foundation.</p> <p>19 THE WITNESS: No, I'm</p> <p>20 not familiar with the deposition or</p> <p>21 testimony. I don't have any</p> <p>22 different reason to -- I would have</p> <p>23 no knowledge of that whole area,</p> <p>24 so, you know, I don't know.</p>	<p style="text-align: right;">Page 626</p> <p>1 matter with the FDA.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. But you were on the committee</p> <p>4 that provided input by Johnson & Johnson</p> <p>5 and took a position before the FDA, right?</p> <p>6 A. They denominated me on that</p> <p>7 Worldwide Talc Committee that, you know,</p> <p>8 you guys have shown me documents about.</p> <p>9 Q. Yes, sir.</p> <p>10 A. I don't know if that committee</p> <p>11 dealt with the citizens' petition. I think</p> <p>12 that's probably putting form over</p> <p>13 substance, because clearly the same people</p> <p>14 would probably be involved. What I'm</p> <p>15 telling you is that the regulatory</p> <p>16 attorneys would take the laboring more in</p> <p>17 dealing with the citizens' petition and the</p> <p>18 response and the substance of it.</p> <p>19 Q. Okay. Is it fair to say today</p> <p>20 is the first time you ever heard that</p> <p>21 Johnson & Johnson never gave the FDA an</p> <p>22 asbestos test after 1973?</p> <p>23 MS. BROWN: Objection.</p> <p>24 Misstates the evidence and lacks</p>
<p style="text-align: right;">Page 625</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. Okay. So if they're asking you</p> <p>3 to go to tell the FDA there's no evidence</p> <p>4 of asbestos, but they didn't tell you that</p> <p>5 they never gave the FDA any tests after</p> <p>6 1973?</p> <p>7 MS. BROWN: I object.</p> <p>8 Lacks foundation. Assumes facts.</p> <p>9 THE WITNESS: You're</p> <p>10 asking me about going to the FDA, I</p> <p>11 don't deal with the FDA in my</p> <p>12 position.</p> <p>13 BY MR. PLACITELLA:</p> <p>14 Q. Well, you did as it related to</p> <p>15 the citizen petition, you were on the</p> <p>16 committee.</p> <p>17 MS. BROWN: Objection.</p> <p>18 Misstates the evidence.</p> <p>19 THE WITNESS: No, I was</p> <p>20 familiar with the citizens'</p> <p>21 petition and what they were doing,</p> <p>22 I was copied on it, but I didn't</p> <p>23 have any responsibility or input to</p> <p>24 it or not. That was a regulatory</p>	<p style="text-align: right;">Page 627</p> <p>1 foundation.</p> <p>2 THE WITNESS: I'm sorry.</p> <p>3 MS. BROWN: Go ahead.</p> <p>4 THE WITNESS: I don't</p> <p>5 have any knowledge of that whole</p> <p>6 area.</p> <p>7 BY MR. PLACITELLA:</p> <p>8 Q. Okay. The next thing I want to</p> <p>9 talk to you about is, and I promise you I</p> <p>10 will not spend the same amount of time as</p> <p>11 everybody else did. The next thing I want</p> <p>12 to talk to you --</p> <p>13 A. Bless you.</p> <p>14 Q. -- about is the Coker case in</p> <p>15 the context of the timeline. Okay.</p> <p>16 A. I was responding to the court</p> <p>17 reporter.</p> <p>18 Q. Yeah, I understand.</p> <p>19 A. I'm sorry. Could you repeat</p> <p>20 it?</p> <p>21 Q. The next thing I want to talk</p> <p>22 to you about is the Coker case and the</p> <p>23 context of the timeline of cases that you</p> <p>24 worked on. Okay?</p>

<p style="text-align: right;">Page 628</p> <p>1 A. I worked on the Coker case.</p> <p>2 Q. Okay. And if you can go to</p> <p>3 1039, which is in your book two. And while</p> <p>4 you're looking for that, when you were</p> <p>5 defending the Coker case, Johnson & Johnson</p> <p>6 had all hands on deck to defend that case,</p> <p>7 do you agree?</p> <p>8 MS. BROWN: Objection.</p> <p>9 Lacks foundation.</p> <p>10 THE WITNESS: I don't</p> <p>11 know what you mean by that.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Well, everybody who could help</p> <p>14 did help?</p> <p>15 A. There's a lot of people who had</p> <p>16 input into the case. I can't answer that</p> <p>17 question.</p> <p>18 Q. Okay. Can you go to 1039.19?</p> <p>19 A. Got it.</p> <p>20 Q. Okay.</p> <p>21 A. I'm sorry 1039, it's an</p> <p>22 exhibit.</p> <p>23 Q. Right. Right.</p> <p>24 A. Number 19.</p>	<p style="text-align: right;">Page 630</p> <p>1 the Coker case.</p> <p>2 Q. Well, they assisted you.</p> <p>3 A. I might have asked them for</p> <p>4 information like I would on any other case.</p> <p>5 Q. Well, that's my point. So --</p> <p>6 A. But I don't know, because I</p> <p>7 don't see the document.</p> <p>8 Q. My point is they were all</p> <p>9 involved somehow in the defense of the</p> <p>10 Coker case?</p> <p>11 MS. BROWN: Objection.</p> <p>12 Misstates the document. Lacks</p> <p>13 foundation.</p> <p>14 THE WITNESS: No, I</p> <p>15 wouldn't characterize it that way.</p> <p>16 The lawyers were involved in the</p> <p>17 defense of it and the company helps</p> <p>18 the lawyers and assists.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. Okay. So were you keeping all</p> <p>21 these people apprised on what was going on</p> <p>22 in the Coker case?</p> <p>23 A. I don't see the emails, so I</p> <p>24 don't know. It's a privileged email, so I</p>
<p style="text-align: right;">Page 629</p> <p>1 Q. Put it up, I put it up on the</p> <p>2 screen to make it easy for you. Okay.</p> <p>3 According to your privilege log, the</p> <p>4 following people worked on the Coker case.</p> <p>5 Michael Chudkowski, John Hopkins, Randy</p> <p>6 Corder, James Molnar, Al Wehner, Nancy</p> <p>7 Musco, Jeff F. Slade, Sam Jiwarijka,</p> <p>8 Marjorie McTernan, right?</p> <p>9 MS. BROWN: The question</p> <p>10 misstates the document.</p> <p>11 THE WITNESS: No, that's</p> <p>12 not correct. You didn't misstate</p> <p>13 any names, but that's not what the</p> <p>14 document says.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. It says "Emails from inside</p> <p>17 counsel to company personnel providing</p> <p>18 legal advice in connection with the Coker</p> <p>19 case." And then to the left for 1998,</p> <p>20 which is when Coker was pending, you have</p> <p>21 all those names that we just read?</p> <p>22 A. Right, but I believe, Mr.</p> <p>23 Placitella, maybe I heard it wrong, that</p> <p>24 your question was these people worked on</p>	<p style="text-align: right;">Page 631</p> <p>1 was probably telling them --</p> <p>2 MS. BROWN: Well, hold a</p> <p>3 second, John, don't.</p> <p>4 THE WITNESS: That's</p> <p>5 right, I can't --</p> <p>6 MS. BROWN: I'll</p> <p>7 instruct you not to answer that.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. I don't want to know what you</p> <p>10 asked them about. I really don't. Your</p> <p>11 privilege log indicates that all these</p> <p>12 people were somehow involved in the Coker</p> <p>13 case, right?</p> <p>14 MS. BROWN: Well, that</p> <p>15 misstates the document.</p> <p>16 THE WITNESS: No, it</p> <p>17 doesn't.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. Well, it says --</p> <p>20 A. It says --</p> <p>21 Q. You sent them emails. They</p> <p>22 sent you emails. There were letters. All</p> <p>23 that, right?</p> <p>24 A. What it says is these people,</p>

<p style="text-align: right;">Page 632</p> <p>1 I'm trying to read, so it lists me as the 2 author and the recipients that you had 3 mentioned and it describes the -- and it 4 gives a description of the subject and I 5 assume that's what it was about, legal 6 advice. 7 Q. Okay. Dr. Hopkins who you say 8 you rely upon and Wehner, they worked on 9 the Coker case with you, correct? 10 A. Dr. Hopkins would have been one 11 of the people I would have consulted with, 12 you know, in terms of company contact, not 13 Dr. Wehner, no. 14 Q. Okay. Can you go to 15 Exhibit 274.2, which would be book one. 16 MS. BROWN: Do you have 17 it? I'll give you my copy. 18 THE WITNESS: I think I 19 got it. 20 MS. BROWN: Okay. I 21 think you're in the transcript 22 binder, John. 23 THE WITNESS: Oh, all 24 right.</p>	<p style="text-align: right;">Page 634</p> <p>1 correct? 2 A. I don't know. 3 MS. BROWN: Object. 4 Lacks foundation. 5 BY MR. PLACITELLA: 6 Q. Well, let me go to the second 7 paragraph. 8 A. Yeah, I'm just reading the 9 first, it's related to the Coker case. It 10 says, with letter from Dr. Abraham to 11 Mr. Hobson, attorney at law. 12 Q. Next line, "Knowing as little 13 as I do about this case at present, 14 specifically Mrs. Coker's history." Do you 15 see that, Mrs. Coker's history? 16 A. Right. 17 Q. So not to belabor the point, 18 because it's in evidence, but during the 19 course of that case, you learned that Alice 20 Blount found asbestos in her testing of the 21 Johnson's Baby Powder, correct? 22 MS. BROWN: Objection. 23 Misstates the evidence. 24 THE WITNESS: I received</p>
<p style="text-align: right;">Page 633</p> <p>1 MS. BROWN: Right. 2 MR. PLACITELLA: A lot 3 of binders. 4 THE WITNESS: I'm sorry, 5 it's just a normal document binder? 6 It's probably the bottom one. 7 Thanks. 8 MR. PLACITELLA: 274.2, 9 not the deposition binder. 10 MS. BROWN: I think we 11 got it now. 12 MR. PLACITELLA: Okay. 13 THE WITNESS: I have it. 14 - - - - - 15 (Letter dated 1/23/88 Bates JNJ 16 000024573 to 24576 marked 17 O'Shaughnessy Exhibit 274 for 18 identification.) 19 - - - - - 20 BY MR. PLACITELLA: 21 Q. Okay. So see if this refreshes 22 your recollection. I have in front of you 23 a January 23, 1998, letter from Dr. Wehner 24 to John Hopkins about the Coker case,</p>	<p style="text-align: right;">Page 635</p> <p>1 that letter from MehaffyWeber 2 regarding Dr. Blount. 3 BY MR. PLACITELLA: 4 Q. So the answer is yes? 5 A. If that's the letter you're 6 referring to, yes. 7 Q. Okay. 8 A. I forget the date. 9 Q. And all those, Mr. Tisi put 10 them in the record. I don't want to spend 11 time on that. But I just want to be clear 12 on what was going on here with Dr. Blount. 13 Okay. Dr. Blount did not test the 14 Johnson's Baby Powder as a consultant for 15 Johnson & Johnson in litigation involving 16 the Coker case, true? 17 MS. BROWN: Objection. 18 Lacks foundation. 19 THE WITNESS: I don't 20 have the letter in front of me, but 21 I don't believe -- oh, for the 22 Coker case? 23 BY MR. PLACITELLA: 24 Q. Yes.</p>

<p style="text-align: right;">Page 636</p> <p>1 A. No. No, I think her testing 2 was on her own accord. 3 Q. Correct. 4 A. And she published a study on 5 it, I think, in 1991. 6 Q. Exactly. So it was no secret 7 that Dr. Blount found asbestos in cosmetic 8 talc, it was in her published article, 9 correct? 10 MS. BROWN: Objection. 11 Speculation. 12 THE WITNESS: I don't 13 recall the article, but I think she 14 did report that. 15 BY MR. PLACITELLA: 16 Q. All right. And if you go to 17 322 in book one? 18 A. I have it. 19 - - - - - 20 (IARC Monograph marked 21 O'Shaughnessy Exhibit 322 for 22 identification.) 23 - - - - - 24</p>	<p style="text-align: right;">Page 638</p> <p>1 tests, finding asbestos in cosmetic talc, 2 you agree that was no secret? 3 MS. BROWN: I object. 4 Lacks foundation. 5 THE WITNESS: No, she 6 published on it. 7 BY MR. PLACITELLA: 8 Q. What was secret was that the 9 positive results were for Johnson's Baby 10 Powder, right, that was a secret? 11 MS. BROWN: That assumes 12 facts and misstates the evidence. 13 THE WITNESS: No, I 14 can't agree with that. 15 BY MR. PLACITELLA: 16 Q. Well, after you were told that 17 she found asbestos in your baby powder, the 18 very subject of her article, who did you 19 tell outside of Johnson & Johnson? 20 MS. BROWN: I object to 21 that question. And instruct you, 22 Mr. O'Shaughnessy, if you did 23 anything in connection with 24 litigation where Dr. Blount was a</p>
<p style="text-align: right;">Page 637</p> <p>1 BY MR. PLACITELLA: 2 Q. Okay. This is a monograph that 3 was published by IARC and you know that's 4 an international working group on cancer, 5 right? 6 A. Yes. 7 Q. And Dr. Blount, if you go to 8 322.246. Dr. Blount's testing results were 9 so important in finding asbestos in the 10 cosmetic talc that it was actually 11 published by IARC in 2012, some, what, 12 20-plus years after? 13 MS. BROWN: I object. 14 It misstates the evidence and lacks 15 foundation with this witness. 16 THE WITNESS: It appears 17 in the monograph. 18 BY MR. PLACITELLA: 19 Q. Right. 20 A. I don't know if it makes it 21 more important or less important, but it 22 certainly appears there. 23 Q. Okay. So it was no secret that 24 Dr. Blount and the significance of her</p>	<p style="text-align: right;">Page 639</p> <p>1 consulting expert not to answer 2 that question. 3 BY MR. PLACITELLA: 4 Q. Okay. Who did you tell outside 5 of Johnson & Johnson or the experts that 6 were working for Johnson & Johnson about 7 the secret that Johnson & Johnson -- that 8 Alice Blount found asbestos in Johnson's 9 Baby Powder? 10 MS. BROWN: I object to 11 the form of the question. It 12 assumes facts and misstates the 13 evidence. 14 THE WITNESS: Yeah, I 15 didn't consider anything like that 16 a secret and I wouldn't have 17 normally discussed any company 18 business with people outside the 19 company. 20 BY MR. PLACITELLA: 21 Q. Who did you tell inside Johnson 22 & Johnson that Dr. Blount found asbestos in 23 Johnson's Baby Powder? 24 MS. BROWN: And I</p>

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1 object. Your Honor, Dr. Blount was
 2 a consulting expert in a litigation
 3 and so to the extent that
 4 Mr. O'Shaughnessy did work in
 5 connection with that litigation, I
 6 would object on work product
 7 grounds.
 8 MR. PLACITELLA: Well,
 9 he just testified that she did no
 10 testing for them in the context of
 11 the case. And this is just a fact
 12 that was related to
 13 Mr. O'Shaughnessy that he admits
 14 happened.
 15 JUDGE SCHNEIDER: I
 16 agree. Objection overruled.
 17 THE WITNESS: You're
 18 asking me as an attorney --
 19 BY MR. PLACITELLA:
 20 Q. Yes.
 21 A. -- who I discussed the Blount
 22 article with at the company?
 23 Q. No, not the Blount article.
 24 Who did you tell at the company that Alice

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1 Blount told you by way of letter through
 2 your counsel that the asbestos, that the
 3 asbestos she found in the cosmetic talc was
 4 in fact Johnson's Baby Powder?
 5 MS. BROWN: Your Honor,
 6 a renewed objection here. This
 7 information came to
 8 Mr. O'Shaughnessy from outside
 9 counsel in connection with a
 10 litigation that he was litigation
 11 counsel for Johnson & Johnson.
 12 What he did with that information
 13 about a consulting expert in a
 14 pending case is privileged. It's
 15 his work product.
 16 JUDGE SCHNEIDER: Query,
 17 you say this information came to
 18 Mr. O'Shaughnessy in connection
 19 with a pending case?
 20 MS. BROWN: Right.
 21 JUDGE SCHNEIDER: But
 22 isn't that reflected in a document
 23 that's already been used during
 24 this and/or Mr. Block's deposition?

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1 MR. PLACITELLA:
 2 Absolutely.
 3 JUDGE SCHNEIDER: So the
 4 work product protection that
 5 applied to it, wasn't it waived?
 6 MS. BROWN: Well, your
 7 Honor, as to the four corners of
 8 the document. This question goes
 9 beyond the four corners of the
 10 document, as we discussed with Your
 11 Honor last week. So certainly, if
 12 counsel wants to put the document
 13 in front of him and ask about --
 14 MR. PLACITELLA: You
 15 want to do that all over again?
 16 MS. BROWN: -- what is
 17 contained in that document. But my
 18 objection is that this question
 19 goes beyond the document and asks
 20 what he did after that.
 21 JUDGE SCHNEIDER: I
 22 think if I recall correctly and we
 23 can always ask the court reporter
 24 to read it back, I think the

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1 question was, did Mr. O'Shaughnessy
 2 tell anyone about what Mr.
 3 Placitella had questioned about and
 4 I suppose he can answer that
 5 question. And then if he recalls,
 6 then we'll have to inquire further
 7 whether it's in connection with
 8 litigation preparation, et
 9 cetera --
 10 MS. BROWN: Understood.
 11 JUDGE SCHNEIDER: -- or
 12 whether there was a conversation at
 13 the water cooler perhaps. So I
 14 would suggest, Mr. Placitella, you
 15 ask the witness does he recall or
 16 have any recollection regarding
 17 conversations with anyone regarding
 18 what you inquired about and then if
 19 the answer is yes, he does recall,
 20 then we have to proceed slowly.
 21 BY MR. PLACITELLA:
 22 Q. Okay. Are you able to flip --
 23 give me the Elmo? Can I have a piece of
 24 paper? It doesn't matter.

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1 THE VIDEOGRAPHER: Yeah,
2 Elmo is up.
3 BY MR. PLACITELLA:
4 Q. Secret, Alice Blount found
5 asbestos in Johnson's Baby Powder. Do you
6 see that?
7 MS. BROWN: I object.
8 Misstating the evidence, lacks
9 foundation, and is argumentative.
10 BY MR. PLACITELLA:
11 Q. Do you see that?
12 A. I do.
13 - - - - -
14 (Handwritten Document marked
15 O'Shaughnessy Exhibit 4 for
16 identification.)
17 - - - - -
18 BY MR. PLACITELLA:
19 Q. Who did you tell outside of the
20 lawyers working on the case that secret?
21 A. You're asking me about events
22 that happened about 25 years ago, so I
23 don't have any specific recollection. But
24 it would have been our practice at the time

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1 in handling litigation and within the
2 context of the litigation, to discuss
3 subject focus with the people at the
4 company.
5 Q. Okay. Did you disclose at any
6 point in time during your defense of the
7 Johnson & Johnson company the fact, the
8 fact that Alice Blount told you she found
9 asbestos in Johnson's Baby Powder?
10 MS. BROWN: Objection.
11 Misstates the evidence. Lacks
12 foundation.
13 THE WITNESS: Like I
14 said, I don't have any specific
15 recollection of any discussions
16 about Blount or that letter. But
17 as a matter of practice as a lawyer
18 defending the case, I or
19 Mr. Williams would have discussed
20 it with company people we were
21 working with in the defense of the
22 litigation.
23 BY MR. PLACITELLA:
24 Q. Did you disclose that to any

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1 litigant or jurist in the context of
2 defending of the case that Alice Blount
3 disclosed to you that her tests
4 demonstrated asbestos in Johnson's Baby
5 Powder?
6 MS. BROWN: That
7 misstates the evidence and lacks
8 foundation and assumes facts.
9 THE WITNESS: I don't
10 recall doing that.
11 BY MR. PLACITELLA:
12 Q. Okay. Now, that secret was not
13 the only secret that you asserted in the
14 Coker case, correct?
15 MS. BROWN: I object to
16 the form of the question as
17 argumentative as to secret,
18 misstating the facts and the
19 evidence.
20 THE WITNESS: I don't
21 regard it as a secret, so your
22 premise to the question, I don't
23 accept.
24

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1 BY MR. PLACITELLA:
2 Q. Before I go to the next
3 question, did you disclose to any doctors
4 or outside scientists the information you
5 learned from Dr. Blount that she found
6 asbestos in Johnson's Baby Powder?
7 MS. BROWN: That assumes
8 facts. Misstates the evidence.
9 THE WITNESS: Like I
10 said, I don't recall any specific
11 discussions, but it would have been
12 our practice to discuss this with
13 company people.
14 BY MR. PLACITELLA:
15 Q. Okay. And did that include the
16 people who recommended the Muscat study?
17 A. I don't recall who it was.
18 Q. Okay. Now, those testing
19 documents to your right, in the Coker case,
20 you made a decision, an affirmative
21 decision not to turn those documents over,
22 true?
23 MS. BROWN: Objection.
24 Misstates facts, assumes facts, and

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1 lacks foundation.
 2 THE WITNESS: I don't
 3 recall specific decisions in the
 4 Coker case, but it would have been
 5 the practice at the time to, in
 6 responding to discovery, to list,
 7 respond to discovery within the
 8 context of the local jurisdiction,
 9 our input from outside counsel with
 10 respect to local obligations under
 11 discovery and the answers would
 12 speak for themselves along with
 13 their objections.
 14 BY MR. PLACITELLA:
 15 Q. Okay.
 16 A. So -- sorry, can I finish?
 17 Q. Sure.
 18 A. You asked me whether any of
 19 these were produced, I don't know, but
 20 discovery, as you know, is a very
 21 sophisticated process and, you know,
 22 requests are made, formal requests, like
 23 interrogatories and requests for production
 24 of documents and the attorneys look at it,

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1 assess it, and they respond in light of the
 2 local rules and what we know about the case
 3 and the specific question.
 4 Q. Okay. In the Coker case, the
 5 plaintiff's lawyer found out about the
 6 McCrone tests and the tests by the Colorado
 7 School of Mines. Do you recall that?
 8 MS. BROWN: I object,
 9 lacks foundation.
 10 THE WITNESS: I don't
 11 know what, I don't know what that
 12 attorney knew or didn't know.
 13 BY MR. PLACITELLA:
 14 Q. And when he asked you, and when
 15 he went to find out what the results of
 16 those tests were, you determined that you
 17 weren't going to turn them over and
 18 asserted they were trade secrets, right?
 19 MS. BROWN: I object.
 20 Lacks foundation, misstates the
 21 evidence, and assumes facts.
 22 THE WITNESS: I never
 23 dealt with that attorney, so I
 24 never had any direct conversation

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1 with him.
 2 BY MR. PLACITELLA:
 3 Q. Before you would assert that
 4 relevant evidence is a trade secret, would
 5 you actually review the evidence?
 6 MS. BROWN: Object.
 7 THE WITNESS: When you
 8 say assert --
 9 BY MR. PLACITELLA:
 10 Q. You, Johnson & Johnson.
 11 A. You mean John O'Shaughnessy
 12 or --
 13 MS. BROWN: Hold on.
 14 Hold on. He is here as an
 15 individual testifying to his own
 16 knowledge, nonprivilege knowledge
 17 as a fact witness. He is not here
 18 too as a corporate representative
 19 for Johnson & Johnson. So when
 20 you're asking him you, you're
 21 asking Mr. O'Shaughnessy, not
 22 Johnson & Johnson.
 23 MR. PLACITELLA: Oh, I
 24 thought he worked for Johnson &

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1 Johnson, he didn't? Who was he
 2 working for?
 3 MS. BROWN: You
 4 understand my objection. He's
 5 not --
 6 MR. PLACITELLA: Was he
 7 working for my firm? I didn't
 8 think so.
 9 MS. BROWN: -- speaking
 10 on behalf of Johnson & Johnson,
 11 he's speaking as himself and you're
 12 entitled to inquire into
 13 nonprivileged information and
 14 that's my objection.
 15 BY MR. PLACITELLA:
 16 Q. Well, thanks for that. When
 17 you were working for Johnson & Johnson on
 18 the Coker case, did you actually review the
 19 material before asserting that it was a
 20 trade secret?
 21 MS. BROWN: I object.
 22 Your Honor, what he did in
 23 connection with his work on the
 24 Coker case and determinations he

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1 made is work product.
 2 BY MR. PLACITELLA:
 3 Q. Okay. Let me go to -- go
 4 ahead.
 5 JUDGE SCHNEIDER: Can
 6 you repeat the question?
 7 - - - - -
 8 (Whereupon, the reporter read
 9 back as requested.)
 10 - - - - -
 11 JUDGE SCHNEIDER: Give
 12 me one moment. It's a close call,
 13 but I think it does ask for work
 14 product information, so the
 15 objection is sustained.
 16 BY MR. PLACITELLA:
 17 Q. Okay. Can you go to 319,
 18 please, in book number one.
 19 A. I have it.
 20 - - - - -
 21 (Letter dated 10/27/97 and
 22 Attachments marked O'Shaughnessy
 23 Exhibit 319 for identification.)
 24 - - - - -

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1 BY MR. PLACITELLA:
 2 Q. Okay. And can you go to 319,
 3 28. Actually, 319.26.
 4 A. Okay.
 5 Q. Do you see 319.26 is a
 6 deposition on written questions in the
 7 Coker case served on McCrone. Do you see
 8 that?
 9 A. Yes.
 10 Q. Okay. And if you look at the
 11 319.28, the questions are "Did you ever
 12 visit and test talc from the Val Chisone
 13 Mine and the Hammondsville Mine for Johnson
 14 & Johnson?" Do you see that?
 15 A. I'm going to it. 319.28.
 16 Q. Uh-huh. I put it up on the
 17 screen to make it easy for you.
 18 A. Yeah, all right. I like to
 19 look at here, because the screen --
 20 Q. Yeah, go ahead.
 21 A. Okay. Oh, it's backwards, all
 22 right. Number two.
 23 Q. Yeah.
 24 A. Deposition directed to McCrone.

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1 Please state if you ever visited or
 2 analyzed talc from Val Chisone Mine, yes.
 3 Q. Then the next page asks if you
 4 did it, turn the documents over. Do you
 5 see that?
 6 MS. BROWN: Objection.
 7 Misstates the evidence.
 8 THE WITNESS: Please
 9 produce any and all documents
 10 responses six through eight, yes.
 11 BY MR. PLACITELLA:
 12 Q. Okay. So now go to 106 in the
 13 same document. Let me know when you're
 14 there?
 15 A. I will.
 16 Q. Actually go to 105.
 17 A. Okay.
 18 Q. And these are the objections
 19 that Johnson & Johnson filed to the
 20 questions that were asked of McCrone. Do
 21 you see that?
 22 A. Yes.
 23 Q. Okay. And when it came to
 24 producing the documents that were

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1 requested, your response was that you
 2 weren't turning them over because it was a
 3 trade secret, right?
 4 MS. BROWN: Objection.
 5 Misstates the document.
 6 BY MR. PLACITELLA:
 7 Q. It says "Finally, the
 8 information requested from the witness is
 9 subject to proprietary and trade secret
 10 privileges of Defendant." That's you?
 11 MS. BROWN: I object.
 12 You're misstating the document.
 13 THE WITNESS: I'm in the
 14 process of reading it.
 15 BY MR. PLACITELLA:
 16 Q. Sure.
 17 A. So you want me to go to, on
 18 .106, it's number four? Is that what it
 19 is?
 20 Q. Four and five.
 21 A. Okay. If I can read it.
 22 MS. BROWN: Yeah, take
 23 as long as you need,
 24 Mr. O'Shaughnessy.

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1 THE WITNESS: So it
2 looks like, I don't recall this
3 document, but it looks like to me
4 that questions were directed to
5 McCrone.
6 BY MR. PLACITELLA:
7 Q. Correct.
8 A. And so the Johnson & Johnson
9 lawyers objected to the questions to
10 McCrone.
11 Q. Correct.
12 A. And on the basis of the
13 objections, including -- I mean, there are
14 a lot of objections here and a lot of this
15 goes to, I guess, the procedure involved in
16 Texas for these sorts of questions to a
17 nonparty.
18 Q. Okay.
19 A. And part of that refers to
20 Texas law --
21 Q. Yup.
22 A. -- that the request was in
23 violation of the Texas law.
24 Q. Yeah. Go ahead.

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1 A. And in terms of the form it was
2 used, so that was an objection. And then
3 they add, among other objections, that "the
4 information requested is subject to
5 proprietary and trade secret privileges of
6 Defendant." So yes, we did assert that.
7 Q. So now we have two sets of
8 secrets in the Coker case, the Blount
9 article, and all the testing documents,
10 right?
11 MS. BROWN: I object.
12 Argumentative, misstates the
13 evidence.
14 BY MR. PLACITELLA:
15 Q. The fact -- I'm sorry, I
16 misspoke, we have two secrets. One, Alice
17 Blount found asbestos in Johnson's Baby
18 Powder; and two, all the testing documents
19 on your right?
20 MS. BROWN: Objection.
21 Misstates the evidence,
22 argumentative.
23 THE WITNESS: No, like I
24 said before, the Blount issue was

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1 not a secret. And number two, what
2 you call a second secret is a trade
3 secret. Now, there's a whole law
4 around trade secret. It's a term
5 of art that applies to a company's
6 documents that I believe are so
7 sensitive that disclosure of them
8 without certain protections would
9 harm the business of the company.
10 So it's not a secret. It's a trade
11 secret and it's recognized and it's
12 often made in objections.
13 BY MR. PLACITELLA:
14 Q. Okay. Did you turn the
15 documents over then?
16 MS. BROWN: Objection.
17 Assumes facts.
18 THE WITNESS: I don't
19 know. I mean, you're showing me
20 one snippet of this discovery
21 record and I'm not sure if it was
22 or wasn't, because if we raised the
23 trade secret objection, then a lot
24 of things could have happened and I

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1 don't recall what. But the
2 plaintiff who wanted the documents
3 could say, well, no, we don't agree
4 with Johnson & Johnson and take it
5 into the court and the court would
6 have ruled on it. I don't know if
7 any of that happened, but there's a
8 whole procedure involved here.
9 BY MR. PLACITELLA:
10 Q. All my question is, sir, do you
11 have any proof, as you sit here today, that
12 you turned any of those documents over on
13 your right in the Coker case?
14 MS. BROWN: Objection.
15 Assumes facts.
16 THE WITNESS: I don't
17 recall what we did in the Coker
18 case. I don't recall a discovery
19 record. We may not have with the
20 court's permission or we may have
21 had to turn them over with the
22 court's ruling.
23 BY MR. PLACITELLA:
24 Q. Okay. Well, you said that --

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1 you said they were trade secrets was they
 2 were so sensitive they could hurt the
 3 company. How could they hurt the company?
 4 MS. BROWN: Objection.
 5 Misstates the testimony and the
 6 evidence.
 7 THE WITNESS: I don't
 8 know what documents were requested,
 9 so I can't comment on that now, but
 10 it could be something about the
 11 procedure or the methods that was
 12 proprietary.
 13 BY MR. PLACITELLA:
 14 Q. Well, you had the McCrone file,
 15 they handed it to you.
 16 A. You handed me three
 17 documents --
 18 Q. No, no, sir, let me back up.
 19 You had the McCrone file, they sent it to
 20 you, correct? In the Ritter case, they
 21 sent you their entire file.
 22 A. No, what she sent me was
 23 elaborated on in that letter, I don't know
 24 if it's the entire file.

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1 Q. It says the entire file in the
 2 document, sir.
 3 A. Let's go see the document,
 4 please.
 5 Q. Okay. I want to make sure I
 6 don't screw something up here. Here's the
 7 letter, 1035.
 8 A. Yeah.
 9 Q. "A copy of our entire file has
 10 been enclosed for your review." Do you see
 11 that?
 12 A. The McCrone file number
 13 ME-4055, I have no idea if that's anything
 14 to do with the trade secrets that's under
 15 discussion in that legal document.
 16 Q. But you didn't turn this file
 17 over either in the Coker case, did you?
 18 A. I don't know if we did.
 19 MS. BROWN: Objection,
 20 wait, hold on.
 21 THE WITNESS: I'm sorry.
 22 MS. BROWN: Lacks
 23 foundation, misstates the evidence,
 24 and assumes facts.

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1 THE WITNESS: Like I
 2 say, I don't know if we did or we
 3 didn't.
 4 BY MR. PLACITELLA:
 5 Q. Okay. Krushinski, you were
 6 asked questions about that in your prior
 7 deposition. Do you recall that?
 8 A. Yes, I do.
 9 Q. Okay.
 10 A. Can I put this binder way,
 11 please?
 12 Q. As long as 277 is not in that
 13 binder, because that's my next question.
 14 A. Oh, okay. Got it.
 15 MR. TISI: I did put a
 16 chair next to you if you want to
 17 move the binders.
 18 MS. BROWN: John, do you
 19 want me to move some of that stuff
 20 over for you?
 21 THE WITNESS: No, it is
 22 in that same binder. Yeah, thanks,
 23 Mr. Tisi. 277.
 24 - - - - -

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1 (Answers to Interrogatories In
 2 Krushinski Case Bates JNJ 000065001
 3 to 650011 marked O'Shaughnessy
 4 Exhibit 277 for identification.)
 5 - - - - -
 6 BY MR. PLACITELLA:
 7 Q. Yes. And, again, 277, it was
 8 marked before, it's the Answers to
 9 Interrogatories that were shown to you in
 10 the last deposition?
 11 A. Okay, yes.
 12 Q. In Krushinski, do you recall
 13 that?
 14 A. Yes.
 15 Q. And do you recall you were
 16 asked, I think it's 17, at 17?
 17 A. Number 17?
 18 Q. Yes which would be 277.7.
 19 A. Yes.
 20 Q. And you approved answers that
 21 said that the defendant's talc source,
 22 defendant is you, correct?
 23 A. Yes.
 24 Q. Did not contain asbestos or

<p style="text-align: right;">Page 664</p> <p>1 tremolite. You approved those answers, 2 right?</p> <p>3 A. This is 17, this is the one we 4 read the other day, yes.</p> <p>5 Q. Yes. Okay. Now, what was the 6 factual source for that statement?</p> <p>7 A. The source would have been, as 8 I said before, it would have been 9 discussions with people at the company in 10 general and in preparation of the defense 11 as well as the examination of documents 12 that the company had.</p> <p>13 Q. Okay. What documents did you 14 look at?</p> <p>15 A. Well, this would include all of 16 the documents that were collected and the 17 synthesis of that with knowledge of 18 counsel, and the knowledge of our counsel.</p> <p>19 Q. Did it include all of those 20 documents that were to your right?</p> <p>21 A. I don't know specifically what 22 was collected at that time.</p> <p>23 Q. Okay. And who was the exact 24 person who told you as a factual basis that</p>	<p style="text-align: right;">Page 666</p> <p>1 Q. Do you remember you testified 2 about that the last time, it was the 3 mediation memo you sent to him?</p> <p>4 A. I don't -- if it was in there, 5 it was in there.</p> <p>6 Q. Okay. And I'll mark my 7 Exhibit 1052, which is the 8 2/24/2003 mediation memo into the record 9 and I won't ask any more questions to keep 10 this thing going.</p> <p>11 - - - - -</p> <p>12 (Mediation Memo dated 2/4/03 13 Bates JNJTALC001243929 to 1243949 14 marked O'Shaughnessy Exhibit 1052 15 for identification.)</p> <p>16 - - - - -</p> <p>17 BY MR. PLACITELLA: 18 Q. In the Krushinski case, do you 19 have any proof that you turned over any of 20 the testing records that are on your 21 right-hand side today?</p> <p>22 MS. BROWN: Objection. 23 Assumes facts, lacks foundation. 24 THE WITNESS: No,</p>
<p style="text-align: right;">Page 665</p> <p>1 the talc sources that you used did not 2 contain asbestos or tremolite?</p> <p>3 A. This would have been based on 4 discussions -- I don't recall any specific 5 discussions for this. But it would have 6 been -- I'm not finished, but it would have 7 been based on the discussions and 8 investigations that we do in terms of 9 defending the litigation and interviewing 10 witnesses and looking at documents. So the 11 attorneys synthesize that and then they use 12 that information to answer the questions.</p> <p>13 Q. And you told Judge Keefe the 14 exact same thing, right, there's no 15 asbestos in Johnson's Baby Powder?</p> <p>16 MS. BROWN: Objection, 17 vague.</p> <p>18 THE WITNESS: That is 19 the position of the company.</p> <p>20 BY MR. PLACITELLA: 21 Q. The answer is yes, you told 22 Judge Keefe that?</p> <p>23 A. I don't know what was told to 24 Judge Keefe.</p>	<p style="text-align: right;">Page 667</p> <p>1 again --</p> <p>2 BY MR. PLACITELLA: 3 Q. That show asbestos, I'm sorry.</p> <p>4 MS. BROWN: Same 5 objections.</p> <p>6 THE WITNESS: Can you 7 ask it?</p> <p>8 BY MR. PLACITELLA: 9 Q. Let me ask you, did you turn 10 over any of the McCrone, any McCrone 11 records in the Krushinski case?</p> <p>12 MS. BROWN: It assumes 13 facts and misstates the evidence.</p> <p>14 THE WITNESS: I have no 15 specific recollection of what was 16 turned over or not turned over in 17 these cases.</p> <p>18 BY MR. PLACITELLA: 19 Q. As you sit here today, do you 20 have any proof that you turned over any 21 testing records at all in the Krushinski 22 case?</p> <p>23 MS. BROWN: That assumes 24 facts. Lacks foundation.</p>

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1 THE WITNESS: You know,
2 you're asking me 20-plus years
3 later whether I have any proof that
4 I turned over certain documents and
5 sitting here today, I don't. But I
6 know that our practice was to, as
7 we went over before, to comply with
8 discovery requests to the best of
9 our ability and I don't recall
10 exactly what was done in each
11 particular case or what documents
12 were produced or not produced.
13 That's specific to the case. It's
14 specific to the request in the
15 case, the local law, input from
16 counsel and our objections.
17 BY MR. PLACITELLA:
18 Q. Okay. So what did you do with
19 the file from the Krushinski case?
20 A. The Johnson & Johnson law
21 department file would have been in the file
22 room and at some point sent to off-site
23 storage.
24 Q. So if it's in off-site storage,

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1 we could look at it and find out exactly
2 what you sent to the plaintiff's lawyer in
3 that case.
4 A. If it's still there.
5 Q. Oh, okay.
6 A. Well, I'm sorry, you said to
7 find out what was sent to the plaintiff's
8 lawyer.
9 Q. Yes, sir.
10 A. That would be in the possession
11 of our local counsel. Our files did not
12 contain documents that we produced in
13 litigation.
14 Q. So when you were producing
15 documents in litigation and people are
16 asking you for information from prior
17 cases, did you go back to all your local
18 counsel and say send me all your files?
19 A. You were asking me about the
20 McCrone production, whether or not McCrone
21 documents were produced in Krushinski and
22 what I'm saying, if they were produced in
23 Krushinski, that would have been handled by
24 the local attorneys, MehaffyWeber firm, in

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1 conjunction with the New Jersey firm.
2 Those documents would be in the collection
3 of our lawyers and they would have
4 collected that beforehand and they would
5 use that document collection, that body of
6 documents to respond to discovery requests.
7 Q. By the way, your lawyer, one of
8 your lawyers was the MehaffyWeber firm in
9 the Krushinski case, right?
10 A. Yes, they would have been
11 assisting and Drinker Biddle, are they on
12 there? Drinker Biddle would have been our
13 counsel as well.
14 Q. And MehaffyWeber was in on the
15 Blount secret of finding asbestos in
16 Johnson's Baby Powder, weren't they?
17 MS. BROWN:
18 Argumentative. Misstates the facts
19 and the evidence, and assumes
20 facts.
21 THE WITNESS: There was
22 no Blount secret.
23 MR. PLACITELLA: I'm
24 sorry, could you read the answer

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1 back?
2 - - - -
3 (Whereupon, the reporter read
4 back as requested.)
5 - - - -
6 BY MR. PLACITELLA:
7 Q. So you told the lawyers on the
8 other side in the Krushinski case about
9 what you knew from Dr. Blount?
10 MS. BROWN: Objection,
11 argumentative.
12 THE WITNESS: That's not
13 my testimony. My testimony is
14 you're characterizing it as a
15 secret, something that was hidden
16 away by the company and I'm saying
17 that's not the case. We respond to
18 discovery based on the particular
19 requests and the particular local
20 law. So you asked me was this
21 provided to other people, I don't
22 know. It might have been. It
23 might not have been.
24

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1 BY MR. PLACITELLA:
2 Q. Well, sir, you said under --
3 your company said under oath that there's
4 no evidence of asbestos or tremolite, but
5 you knew that was not true?
6 MS. BROWN: Objection,
7 misstates testimony.
8 THE WITNESS: No, that's
9 not correct at all.
10 BY MR. PLACITELLA:
11 Q. Okay. Let's keep going. I
12 don't know, when do you guys want to take a
13 break? Is now a good time? Do you want me
14 to keep pushing forward?
15 MS. BROWN: Sure, we'll
16 take a break.
17 MR. PLACITELLA: I'm
18 fine --
19 MS. BROWN: How are you
20 doing on time, Chris?
21 MR. PLACITELLA: I'm
22 getting there.
23 MS. BROWN: Okay. Why
24 don't we take a short break then?

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1 MR. PLACITELLA: Don't
2 make it too long.
3 MS. BROWN: Okay.
4 THE VIDEOGRAPHER: Off
5 the record, 2:12 p.m.
6 - - - - -
7 (A recess was taken at this time.)
8 - - - - -
9 THE VIDEOGRAPHER: We
10 are back on the record at 2:36 p.m.
11 BY MR. PLACITELLA:
12 Q. Okay. So for context,
13 Krushinski is around 2000, 2001, right?
14 A. I'll accept that.
15 Q. Okay. And then in 2002, the
16 issue with the National Toxicology Project
17 comes up, remember you talked about that
18 last time?
19 A. Yes.
20 Q. And internally at Johnson &
21 Johnson, you testified that your
22 recommendation was to tell the National
23 Toxicology Program there's no asbestos in
24 Johnson & Johnson's talc. Do you recall

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1 that?
2 A. No.
3 Q. You don't recall giving that
4 testimony?
5 A. Are you referring to the email
6 I discussed?
7 Q. Yes.
8 A. And can I see it, I please?
9 Q. Okay. I'll find it at a break.
10 I didn't think it was going to be an
11 argument.
12 A. No, it's just the way you're
13 phrasing it, it doesn't sound exactly the
14 way I remember.
15 Q. I'll pull it out in a break.
16 And then in 2004, do you remember the
17 discussion about the forensic analytical
18 report that you received from the TV
19 station. Do you recall that?
20 A. I received, yeah, I recall the
21 issue with the TV station, yeah.
22 Q. And I actually don't have it in
23 your binder, I apologize.
24 A. No, that's fine.

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1 Q. But I will --
2 A. Is this it here?
3 Q. Yeah. This is the report that
4 you went over with Mr. Block.
5 A. It was the subject of some
6 emails, right?
7 Q. Correct. Correct. And you
8 testified that you learned of the report
9 because it might come up in litigation. Do
10 you recall that?
11 A. I don't have the email in front
12 of me, the exact words that they used when
13 they sent it. I was copied on it and
14 oftentimes, they would copy me on
15 information that could be -- come up in
16 litigation because they know that was my
17 role.
18 Q. Right.
19 A. Yeah.
20 Q. And I think you testified last
21 time that one of the reasons you got the
22 report was because it might come up in
23 litigation. That was your testimony.
24 A. Yeah, without seeing the email,

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1 that would be one of the reasons I get
 2 something like this.
 3 Q. Okay. But it never came up in
 4 litigation, right?
 5 A. Well, we're talking about it
 6 now.
 7 Q. No, before now.
 8 A. Oh, I don't know.
 9 Q. Well, one of the reasons it
 10 never come up is because you never told
 11 anybody about it, right?
 12 MS. BROWN: Objection.
 13 Misstates the evidence.
 14 THE WITNESS: No, I
 15 can't say that.
 16 BY MR. PLACITELLA:
 17 Q. So you did disclose --
 18 A. I don't know why it never came
 19 up.
 20 Q. So you did disclose it in
 21 litigation that you had this report in your
 22 possession showing there was asbestos in
 23 Johnson's Baby Powder --
 24 MS. BROWN: Objection.

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1 MR. PLACITELLA: -- from
 2 the, on Exhibit 989, you told
 3 somebody about it?
 4 MS. BROWN: Objection,
 5 misstates the testimony. It
 6 assumes facts and it misstates the
 7 evidence.
 8 THE WITNESS: No, I
 9 don't think I testified to that
 10 last time.
 11 BY MR. PLACITELLA:
 12 Q. Well, I'm asking you now.
 13 A. Okay. What is it?
 14 Q. So you did turn this report
 15 over in the context of litigation?
 16 A. I don't know what happened to
 17 the report. It was in the company files.
 18 So I don't know whether it was collected
 19 and turned over or not. I just don't know.
 20 Q. Do you have any recollection of
 21 turning it over in any cases that you were
 22 involved in?
 23 A. No, I don't recall any specific
 24 documents that were produced in the

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1 litigation.
 2 Q. Okay. And now I want to turn
 3 your attention to the Durham case, 2006.
 4 You worked on that case, right?
 5 MS. BROWN: Objection,
 6 foundation.
 7 THE WITNESS: I don't
 8 recognize the name, but do you have
 9 something I can look at?
 10 - - - - -
 11 (Deposition of Dr. John Hopkins
 12 dated 3/6/07 marked O'Shaughnessy
 13 Exhibit TR-15 for identification.)
 14 - - - - -
 15 BY MR. PLACITELLA:
 16 Q. Sure. Can you look at the
 17 transcript binder and it's labeled TR15 and
 18 I'll put it up here. Maybe you don't even
 19 want to look at it. This is a deposition
 20 given of Dr. Hopkins in the Durham case
 21 dated March 6, 2007. Do you see that?
 22 MS. BROWN: What's the
 23 number again?
 24 MR. PLACITELLA: TR15 in

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1 the transcript file.
 2 MS. BROWN: Object as
 3 lacking foundation.
 4 THE WITNESS: I see,
 5 yeah, can you take away that big
 6 thing.
 7 BY MR. PLACITELLA:
 8 Q. Oh, yeah, sure.
 9 A. I don't recognize this.
 10 Q. Do you see on the next page
 11 that you're the lawyer listed for
 12 representing Dr. Hopkins?
 13 A. Oh, I see Gene Williams is, but
 14 I'm listed as also present. I see it.
 15 Q. So you and Gene Williams?
 16 A. Uh-huh.
 17 Q. Okay. And he's at
 18 MehaffyWeber, right?
 19 A. And then he went to the firm
 20 that's listed here, Shook, Hardy & Bacon.
 21 Q. Did he take the secret about
 22 Dr. Blount with him to Shook, Hardy &
 23 Bacon?
 24 MS. BROWN: Objection,

<p style="text-align: right;">Page 680</p> <p>1 misstates the evidence. 2 Argumentative. 3 THE WITNESS: Again, I 4 don't want to, you know, belabor 5 it, but I don't think there was any 6 secret about that. And, yes, 7 Mr. Williams did transfer all of 8 the files that he had on J&J, it 9 went with him. 10 BY MR. PLACITELLA: 11 Q. Okay. Can you go to two -- so 12 you worked on the Durham case, does that 13 refresh your memory? 14 A. Apparently, I was there, yes. 15 Q. Okay. Can you go to 16 Exhibit 230 in your binders, I think that 17 would be binder number one. 18 A. I have 230. 19 ----- 20 (Affidavit of Dr. John Hopkins 21 in Durham case marked O'Shaughnessy 22 Exhibit 230 for identification.) 23 ----- 24</p>	<p style="text-align: right;">Page 682</p> <p>1 Q. Oh, I goofed up. 2 A. That's all right. 3 Q. Lea, if you're listening, 30 4 lashes. Okay. Do you see here under 5 audits of talc mines? 6 A. Yes. 7 Q. Okay. He says that he 8 consulted Dr. Pooley. Do you know who 9 Dr. Pooley is? 10 A. Yes. 11 Q. Okay. Who is Dr. Pooley? 12 A. I believe he's a professor at 13 the University of Cardiff in Wales who 14 specializes in, I was going to say lung 15 issues and but I see here it says 16 mineralogy and geology, so I'm corrected by 17 that. 18 Q. He's somebody who helped you 19 out in litigation? 20 A. I believe we consulted with 21 Professor Pooley in the litigation, yes. 22 Q. And Dr. Hopkins says to you, or 23 not to you, but writes in his affidavit 24 "the conclusion of the audits," he's</p>
<p style="text-align: right;">Page 681</p> <p>1 BY MR. PLACITELLA: 2 Q. And 230 is an affidavit 3 submitted by Johnson & Johnson signed by 4 Dr. Hopkins in the Durham case, right? 5 A. Yes. 6 Q. Okay. And Dr. Hopkins is one 7 of those scientists that you stated that 8 you relied upon for giving you the truth 9 and the whole truth, correct? 10 A. Yes. 11 Q. Okay. And he was also on the 12 Worldwide Talc Safety Committee, right? 13 A. He was listed on it, yes. 14 Q. Ms. Brown is smiling at me. 15 She doesn't usually do that. Okay. And on 16 page 230.3, if you can go to that? 17 A. I'm on 230 and it would be 18 page 3. 19 Q. Yeah, it says 230.3. 20 A. I don't have that, but I do 21 have -- I do have the page you have up on 22 the screen. 23 Q. Okay. I'm sorry. 24 A. Mine is missing an exhibit tag.</p>	<p style="text-align: right;">Page 683</p> <p>1 talking about looking at the talc mines in 2 Italy and Vermont. Do you see that? 3 A. Yes, I do. 4 Q. And he says "The conclusion of 5 the audits was that for both the Italian 6 and Vermont mines, there was zero evidence 7 of asbestos in the geology and mineralogy 8 of the mines." Do you see that? 9 A. I do. 10 Q. But you had testing reports in 11 your possession that contradicted that 12 statement, didn't you? 13 MS. BROWN: Objection. 14 Misstates the evidence. 15 THE WITNESS: The 16 testing reports that we spoke about 17 before were -- McCrone testing was 18 of the baby powder. This seems to 19 be about the geology. 20 BY MR. PLACITELLA: 21 Q. Right. 22 A. Right. Right. 23 Q. But you also had reports from 24 Dr. Pooley about his studies of your mines,</p>

<p style="text-align: right;">Page 684</p> <p>1 correct?</p> <p>2 A. I believe Pooley did visit our</p> <p>3 mines, yes.</p> <p>4 Q. And can you go to J&J 586 and</p> <p>5 maybe I can, if you wouldn't mind, I'll</p> <p>6 walk over and try to help you.</p> <p>7 A. Sure. Sure.</p> <p>8 Q. You're not going to find it</p> <p>9 over there.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Okay. It's in this book. If</p> <p>12 you go to 586 in this book.</p> <p>13 A. I have it.</p> <p>14 Q. Okay. And for identification,</p> <p>15 586 is a report entitled "Department of</p> <p>16 Mineral Exploitation from the University of</p> <p>17 Cardiff." And we know that's where</p> <p>18 Dr. Pooley worked, right?</p> <p>19 A. Yes.</p> <p>20 Q. And this dates all the way back</p> <p>21 to 1972, right, if you look on the next</p> <p>22 page.</p> <p>23 A. It does, yes.</p> <p>24 Q. And it says "This document</p>	<p style="text-align: right;">Page 686</p> <p>1 talk about what they found. Do you see</p> <p>2 that?</p> <p>3 A. I do.</p> <p>4 Q. And it says "Minerals found and</p> <p>5 associated with the talc specimens included</p> <p>6 tremolite." Do you see that?</p> <p>7 A. I'm probably looking at the</p> <p>8 wrong paragraph.</p> <p>9 Q. Okay. I have it.</p> <p>10 A. I see that, second paragraph.</p> <p>11 Q. Yup.</p> <p>12 A. The carbonate night specimens</p> <p>13 examined, et cetera and were accompanied by</p> <p>14 talc chloride, tremolite, others, all in</p> <p>15 minor amounts.</p> <p>16 Q. And then in the next paragraph</p> <p>17 it says "The powder X-ray examination</p> <p>18 confirmed that a major minerals occurring</p> <p>19 in the hand specimens and a classification</p> <p>20 was possible into three groups already</p> <p>21 mentioned, rock types, carbonate samples,</p> <p>22 and talc specimens." Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And it says "The only asbestos</p>
<p style="text-align: right;">Page 685</p> <p>1 represents the completion report of the</p> <p>2 Italian mine samples and other powders</p> <p>3 supplied by Johnson & Johnson." Do you see</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And if you go to</p> <p>7 586.124.</p> <p>8 MS. BROWN: What binder</p> <p>9 is this in, I don't have it.</p> <p>10 MR. PLACITELLA: It says</p> <p>11 "additional testing documents."</p> <p>12 You have it, it might be behind</p> <p>13 you, I don't know.</p> <p>14 MS. BROWN: Okay.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. Are you with me?</p> <p>17 A. Not yet.</p> <p>18 Q. It's towards the end.</p> <p>19 A. Yeah, I'm almost there. I got</p> <p>20 it.</p> <p>21 Q. There's a section at the end,</p> <p>22 it says conclusions. Do you see that?</p> <p>23 A. Right, yeah.</p> <p>24 Q. And in the conclusions, they</p>	<p style="text-align: right;">Page 687</p> <p>1 type mineral to be detected in the hand</p> <p>2 samples was tremolite." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. That's from Dr. Pooley,</p> <p>5 that's not consistent with what Dr. Hopkins</p> <p>6 put in his affidavit, is it?</p> <p>7 MS. BROWN: Objection.</p> <p>8 Misstates the document and the</p> <p>9 evidence.</p> <p>10 THE WITNESS: You know,</p> <p>11 there was a time when I kind of</p> <p>12 understood a little bit about some</p> <p>13 of these terms, but I definitely</p> <p>14 don't now. But even back then when</p> <p>15 I did have an understanding of it,</p> <p>16 I would ask the company scientists</p> <p>17 to explain it to me. So I can't</p> <p>18 really interpret this.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. Did Dr. Hopkins in making this</p> <p>21 statement, this sworn statement, ever</p> <p>22 advise you that he had in his possession</p> <p>23 test results from Pooley that actually</p> <p>24 showed tremolite asbestos in the Italian</p>

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1 mines?

2 MS. BROWN: Objection.

3 That misstates the evidence.

4 THE WITNESS: My

5 recollection of any discussions I

6 had with Hopkins and others was

7 that the findings were always no

8 asbestos there.

9 BY MR. PLACITELLA:

10 Q. Well, that's not what this says

11 though, sir --

12 A. I know, but, see, now we're

13 getting into what tremolite is or isn't and

14 I'm not really qualified to say that and I

15 don't know what Mr. Hopkins would say about

16 that.

17 Q. Let's read it together.

18 A. Sure.

19 Q. "The only asbestos type mineral

20 to be detected in the hand samples was

21 tremolite." Did I read that correctly?

22 A. You did.

23 Q. Okay. And remember that Dr.

24 Hopkins in his affidavit that was turned

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1 over in this case also said that Pooley

2 never found any tremolite-type asbestos in

3 the Vermont mines. Do you remember that?

4 A. Yeah, well, from what we just

5 read before, right?

6 Q. Right.

7 A. Okay.

8 Q. Can you go in the same book to

9 620. 620 is a May 16, 1973, report from

10 T.H. Shelley. Do you see that?

11 A. 620?

12 Q. Yes.

13 A. "Proposed specs for analyzing

14 talc for asbestos."

15 Q. J&J --

16 A. The next page has got it. I

17 have it.

18 Q. It's page 2, I'm sorry.

19 MS. BROWN: I object as

20 lacking foundation.

21 BY MR. PLACITELLA:

22 Q. Okay. And in the third

23 paragraph it says that Pooley found

24 .05 percent of a tremolite-type asbestos in

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1 Vermont, right?

2 MS. BROWN: It does not

3 say that.

4 BY MR. PLACITELLA:

5 Q. Let me read the whole thing so

6 it's clear, "England is considering method

7 of preconcentrating the asbestos so as to

8 to be analyze by X-ray." Do you see that?

9 A. I do.

10 Q. "They find no asbestos by doing

11 this with Italian talc. They find (Pooley)

12 .05 percent of a tremolite-type in

13 Vermont." Do you see that?

14 A. I do.

15 Q. Okay. And if we go back to Dr.

16 Hopkins' affidavit, he says Pooley found no

17 asbestos, zero evidence in the Italian and

18 the Vermont mines, correct?

19 A. Right.

20 Q. Now, if you go to 230.4, which

21 is the next page.

22 A. Okay.

23 Q. That's the end of his

24 affidavit?

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1 A. The affidavit?

2 Q. Yes. I'll put it up on the

3 screen. He ends by saying "It may be

4 concluded there has never been asbestos

5 contamination of the talc used by Johnson &

6 Johnson in the United States from the

7 period in question, 1955-2002." He says

8 that, correct?

9 A. He does say that.

10 Q. Okay.

11 A. And, you know, you're asking

12 me, you know, you're showing me these

13 documents from 1973, et cetera, and I don't

14 think you're asking me to interpret them.

15 But maybe you are and to the extent you

16 are, I cannot interpret them and you would

17 have to speak to Mr. Hopkins about that.

18 Okay?

19 Q. Respectfully sir, I move to

20 strike. There was no question.

21 A. It was the end of the answer to

22 your first question.

23 Q. I will leave it as it is.

24 Now, Dr. Hopkins actually

<p style="text-align: right;">Page 692</p> <p>1 testified with you present in that case, 2 correct? 3 A. That transcript you showed me, 4 yes. 5 Q. Okay. 6 A. And by that case, you mean that 7 Durham case, right? 8 Q. Correct. 9 A. Yeah. 10 Q. And can you go to page -- 11 A. And what is that again, sorry, 12 Mr. Placitella. 13 Q. I'm sorry, it's TR15 in the 14 transcript binder. 15 A. TR15. 16 Q. And I'm going specifically to 17 TR15.34. And focusing on page 133. 18 A. Just want to make sure I have 19 the deposition here. 20 Q. Yes. 21 A. Okay. Okay. 133? 22 Q. Right. It would be page 34 of 23 your document. You know what, in the 24 interest of time, let's just go right to</p>	<p style="text-align: right;">Page 694</p> <p>1 A. I have it. 2 Q. Okay. And I highlighted in 3 green the part I want to talk to you about. 4 A. Okay. I see it. 5 Q. So Question: "So based on what 6 we've discussed, what you've come to the -- 7 for the talc sources used in the United 8 States over the period 1955 to 2002, 9 there's never been an instance of asbestos 10 contamination?" 11 Answer: "That appears to be 12 the case, yes. Reviewing all of the data 13 from the mineralogy, from the mine, from 14 the actual physical testing of talc samples 15 from those mines, then asbestos 16 contamination, there is no evidence." Do 17 you see that? 18 A. Yeah, he's talking about the 19 totality of the evidence, I think. 20 Q. And in this case, the Durham 21 case, do you have any evidence that you 22 ever turned over any of the testing 23 documents that we went over here -- that we 24 pointed out here today?</p>
<p style="text-align: right;">Page 693</p> <p>1 TR15.37, okay, so that's three pages later. 2 A. The same transcript? 3 Q. Yeah, same transcript. 4 A. 15.37? 5 Q. Yeah. 6 A. Tell me what page on the 7 transcript, I could probably find it. 8 Q. Sure, absolutely, it's page 143 9 of the transcript. 10 A. Yeah, that's a lot easier. I 11 thought it was a lot easier, but I don't 12 see. 13 Q. Yeah, no problem. 14 A. I don't have 143. It goes from 15 133 to 162. 16 Q. Oh, that's bad -- 17 A. Then it goes down. 18 Q. That's bad for me. Well, let 19 me show it to you and then we'll fix it. 20 A. What was the page? I think, 21 I'm closing in on it. 22 MS. BROWN: 143. 23 BY MR. PLACITELLA: 24 Q. 143.</p>	<p style="text-align: right;">Page 695</p> <p>1 MS. BROWN: Objection. 2 Misstates the evidence. Lacks 3 foundation. 4 THE WITNESS: My answer 5 would be the same answer I gave 6 before that I have no recollection 7 of what was done in a specific case 8 and I went through how we answered 9 the interrogatories in cases and 10 what we did to do that and so I 11 can't answer your question other 12 than the way I answered it before, 13 which I could repeat, if you want, 14 but I'm getting tired -- 15 MR. PLACITELLA: Please 16 don't. 17 THE WITNESS: -- and I 18 don't know if I can do it. 19 BY MR. PLACITELLA: 20 Q. Please don't. 21 A. All right. 22 Q. As you sit here today, do you 23 have any recollection of turning over the 24 testing documents in the Durham case?</p>

<p style="text-align: right;">Page 696</p> <p>1 MS. BROWN: Objection. 2 Lacks foundation. Assumes facts. 3 THE WITNESS: I don't 4 have any specific recollection of 5 what was produced in this case or 6 not produced, because of the 7 passage of time. 8 BY MR. PLACITELLA: 9 Q. Okay. Do you have any 10 recollection of turning over the Blount 11 report or the information that Blount found 12 asbestos in Johnson's Baby Powder in the 13 Durham case? 14 MS. BROWN: That assumes 15 facts and lacks foundation. 16 THE WITNESS: It would 17 be the same answer, Mr. Placitella. 18 BY MR. PLACITELLA: 19 Q. Okay. Last case I want to ask 20 you about. You were involved in a case 21 called Lopez. Do you recall that? It 22 should be a little bit more familiar, 23 because it's a little bit more recent. 24 A. I don't, but if you point it</p>	<p style="text-align: right;">Page 698</p> <p>1 blew it up for you. 2 A. Yeah, I was present for that, 3 yes. 4 Q. And if you go to -- 5 A. And also, for J&J was Mr. 6 Pulliam and Mr. Williams. 7 Q. Wow, you've got a lot of people 8 there. 9 A. Not compared to the others. 10 Q. Okay. And can you go to 11 1044.84. And I'll tell you exactly what 12 page that is in a second. I'm sorry. 13 A. Yeah, I think you better give 14 me the page. 15 Q. Hold on. Go to, it's page 84. 16 I blew it up. 17 A. I have it. 18 Q. The testimony is but -- "All 19 right. But there was never a positive 20 result for finding asbestos from any of the 21 mines from the ore?" 22 And the answer is "No, 23 never." Do you see that? 24 A. Yes.</p>
<p style="text-align: right;">Page 697</p> <p>1 out to me, I'm sure you have a reason why 2 you're saying that. 3 Q. Can you go to 1044 in your 4 book. And 1044 is the deposition of Roger 5 Miller. 6 MR. COX: The transcript 7 1044? 8 MR. PLACITELLA: Yes. 9 THE WITNESS: Okay, I'm 10 sorry, wrong one. I see Lopez, 11 yes. 12 - - - - - 13 (Deposition of Roger Miller 14 taken 1/16/07 marked O'Shaughnessy 15 Exhibit 1044 for identification.) 16 - - - - - 17 BY MR. PLACITELLA: 18 Q. Okay. And if you go to the 19 second page, you'll see that you were the 20 person representing Miller in this case? 21 A. I'm looking for my name. I 22 don't doubt what you say, but there's so 23 many people here. 24 Q. I blew it up on the bottom. I</p>	<p style="text-align: right;">Page 699</p> <p>1 Q. Okay. And can you go to, can 2 you go to the 1044.26 which would start on, 3 look at page 102? 4 A. 1044? 5 Q. Which would be page 102 of the 6 transcript. 7 A. Oh, I'm sorry. 8 Q. That's all right. I'm sorry, 9 almost done. 10 A. I see it. 11 Q. Okay. Now, this is the same 12 Roger Miller, by the way, who executed the 13 Edley affidavit way back 20 years earlier 14 in 1987, correct? 15 A. Yes. 16 Q. And he's asked a series of 17 questions. First he's asked "So the 18 Argonaut mine, you think, went online -- in 19 other words the operations began, right, in 20 approximately 1975?" And he says "Right." 21 Do you see that? 22 A. I see it on the screen, I'm 23 just looking for the page again, so I can 24 follow it.</p>

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1 Q. It's the next page.
 2 A. What page of the transcript?
 3 Q. It would be page 103.
 4 A. I got it. I'm sorry. It's
 5 right in front of me.
 6 Q. It's no problem. And he's
 7 asked specifically "So did the ore from the
 8 Argonaut mine also go to the Ludlow mill?"
 9 "Yes.
 10 "And how long was the
 11 Argonaut mine used?
 12 "It's still in operation."
 13 Do you see that?
 14 A. Yes.
 15 Q. And then he's asked on the very
 16 next page, "Was there testing done at the
 17 Argonaut mine?" Right?
 18 And he says, Answer: "Yes.
 19 "Okay. Same fashion?
 20 "Same protocol, exactly.
 21 "And the results never
 22 revealed any asbestos?" Do you see that?
 23 A. Well, he answers "Never found
 24 anything.

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1 "Were they looking for a
 2 particular form, if you know?
 3 "I believe the suspect
 4 mineral was chrysotile but I cannot tell
 5 you precisely what McCrone was looking
 6 for."
 7 Q. Right. And his answer was,
 8 just to be clear, and the results never
 9 revealed anything, "never found anything,"
 10 correct?
 11 A. "Never found anything."
 12 Q. Right.
 13 A. And well, the results never
 14 revealed asbestos. Never found anything.
 15 Then he goes on to discuss, I guess he
 16 discusses chrysotile and tremolite and I
 17 can't follow it.
 18 Q. Okay. I'm not asking you to.
 19 So now go to the McCrone book of tests, the
 20 first book and look at J&J 65 and if you
 21 need to help you, I'm happy to come over
 22 and help you.
 23 A. I think I got it by now. I
 24 surrender. I think the volume must be over

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1 here, Mr. Tisi. These don't look like
 2 this.
 3 MR. TISI: These are the
 4 Musco.
 5 MS. BROWN: I have mine
 6 McCrone, do you want my McCrone?
 7 MR. PLACITELLA: Yeah,
 8 sure. Just give it to him.
 9 MS. BROWN: What is it,
 10 binder one?
 11 MR. PLACITELLA: One.
 12 MS. BROWN: Here you go.
 13 THE WITNESS: Thank you.
 14 BY MR. PLACITELLA:
 15 Q. Do you remember he's the one
 16 who said in the Edley affidavit that he was
 17 relying upon McCrone testing?
 18 A. Are you talking about Roger
 19 Miller --
 20 Q. Yes, sir.
 21 A. -- in the affidavit?
 22 Q. Yeah. He cited the McCrone
 23 testing?
 24 A. If he did, I accept that.

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1 Q. So this document from 1974?
 2 A. And which one is it, please?
 3 Q. Sixty-five.
 4 A. Got it.
 5 Q. Is entitled from McCrone
 6 "Examination of Talc Samples Argonaut Ore
 7 Body." Do you see that?
 8 A. Yes.
 9 Q. So let's just put them side by
 10 side for a second. Give me a second.
 11 Okay. So now we have them side by side.
 12 A. The transcript and this
 13 exhibit?
 14 Q. Correct. Where he says, okay.
 15 When he's talking about the Argonaut mine,
 16 never received any -- never revealed any
 17 asbestos. Do you see that? And he says
 18 never found anything, right, here, I'll
 19 blow it up again, right?
 20 A. Okay.
 21 Q. Now, let's go look at what,
 22 let's look at this report --
 23 A. Yes.
 24 Q. -- from McCrone.

<p style="text-align: right;">Page 704</p> <p>1 A. Okay.</p> <p>2 Q. That's right next to it. And</p> <p>3 do you see Table 2, Electron Microscopic</p> <p>4 Analyses of Talc Ore Symbols?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And you see they actually have</p> <p>7 chrysotile and amphibole?</p> <p>8 A. I see those terms.</p> <p>9 Q. And you see that they list all</p> <p>10 the chrysotile findings in the chart?</p> <p>11 MS. BROWN: Objection,</p> <p>12 misstates the document.</p> <p>13 THE WITNESS: I see</p> <p>14 what's there, but you're asking me</p> <p>15 to interpret the chart and I really</p> <p>16 can't do that. I mean, you know</p> <p>17 these -- one -- I've seen testing</p> <p>18 documents, you know, from time to</p> <p>19 time, and one thing I learned is</p> <p>20 that, you know, the testing was</p> <p>21 varied, it was different and there</p> <p>22 was a lot of it. And to fully</p> <p>23 understand it, you need to really</p> <p>24 have interpreted by someone who is</p>	<p style="text-align: right;">Page 706</p> <p>1 A. In the context of that</p> <p>2 deposition what it says there and there's a</p> <p>3 lot of other questions I guess too --</p> <p>4 Q. Yes, sir.</p> <p>5 A. -- so you've got to read those</p> <p>6 depositions in context --</p> <p>7 Q. Yes, sir?</p> <p>8 A. -- as I'm sure you're aware.</p> <p>9 Q. I'm absolutely aware.</p> <p>10 MS. BROWN: Let him</p> <p>11 finish.</p> <p>12 THE WITNESS: But you're</p> <p>13 plucking out things and I am saying</p> <p>14 I see what you're reading.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. Okay. And Table 1 is entitled</p> <p>17 "Electron Microscope Asbestos [sic] of the</p> <p>18 Talc Core Samples." Do you see that?</p> <p>19 A. It says --</p> <p>20 Q. Analysis of the Talc Core</p> <p>21 Samples, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And then there's a</p> <p>24 listing of chrysotile and it shows finding</p>
<p style="text-align: right;">Page 705</p> <p>1 familiar with the testing and we</p> <p>2 would use people at the company in</p> <p>3 R&D and the scientific disciplines</p> <p>4 to do that.</p> <p>5 So you're asking me</p> <p>6 these questions now and they get</p> <p>7 into a form of interpretation which</p> <p>8 I'm not comfortable doing. I don't</p> <p>9 have the expertise to do that. And</p> <p>10 you're lining it up with his</p> <p>11 testimony about that mine, but I</p> <p>12 don't know if that's the testing he</p> <p>13 was referring to or anything else,</p> <p>14 because this -- I don't know what</p> <p>15 he's referring to.</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. What was my question?</p> <p>18 A. Can you read it back, please?</p> <p>19 I think we somehow switched roles here.</p> <p>20 Q. Well, I'm trying to understand,</p> <p>21 so let me ask it again. Okay. He</p> <p>22 testified under oath in front of you that</p> <p>23 there was -- the results never revealed</p> <p>24 asbestos ever, right?</p>	<p style="text-align: right;">Page 707</p> <p>1 chrysotile at almost every level of the</p> <p>2 mine, right?</p> <p>3 MS. BROWN: I object.</p> <p>4 THE WITNESS: I can't</p> <p>5 interpret that.</p> <p>6 MS. BROWN: That</p> <p>7 misstates the document.</p> <p>8 THE WITNESS: I'm not</p> <p>9 the right person to ask that</p> <p>10 question.</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. Let me ask you this. Did Roger</p> <p>13 Miller ever share this document with you in</p> <p>14 the context of his testimony that there was</p> <p>15 never ever any evidence?</p> <p>16 A. Did it happen during the</p> <p>17 deposition? I don't -- if it was, it was</p> <p>18 an exhibit at the deposition.</p> <p>19 Q. Should have been, right?</p> <p>20 A. No, I'm saying --</p> <p>21 MS. BROWN: Objection.</p> <p>22 THE WITNESS: -- I don't</p> <p>23 know if it was or wasn't. I don't</p> <p>24 know.</p>

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1 BY MR. PLACITELLA:
 2 Q. I don't know, you tell me, you
 3 were there.
 4 A. Yes, I was there 20 years ago
 5 or so.
 6 Q. Well, shouldn't it have been if
 7 he's testifying there is no evidence,
 8 shouldn't it have been there --
 9 A. It depends on what the
 10 attorneys were showing him.
 11 Q. Okay. So now I want to go to a
 12 new topic, because I'm trying to keep to my
 13 promise to His Honor.
 14 By the way, before I end,
 15 when was the first time that you know that
 16 the testing documents that we flagged today
 17 in your deposition were ever turned over in
 18 the context of a talc lawsuit?
 19 MS. BROWN: Objection.
 20 Lacks foundation, misstates the
 21 evidence, assumes facts.
 22 THE WITNESS: I think I
 23 touched on this before in your
 24 specific questions to specific talc

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1 cases. There were, you know, a few
 2 talc cases, many talc cases maybe
 3 over time and they all had their
 4 separate discovery requests and
 5 responses. And they were handled
 6 separately. And we complied with
 7 whatever our obligations were in
 8 the specific case. And at this
 9 point in time, I don't recall any
 10 specific documents or any specific
 11 productions. So you're asking me,
 12 you know, I know you put your three
 13 stacks of documents and I accept
 14 you at your word that they're
 15 McCrone testing and whether they
 16 were produced or not, but I would
 17 not have that information.
 18 BY MR. PLACITELLA:
 19 Q. Respectfully move to strike.
 20 My question is simply this. You were in
 21 charge of the litigation. When is the
 22 first time you turned over the testing
 23 results by McCrone or anybody else for
 24 asbestos in the Johnson & Johnson talc in a

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1 lawsuit? When is the first time?
 2 MS. BROWN: Same
 3 objections to the question you just
 4 asked as well as now --
 5 MR. PLACITELLA: Please
 6 don't, please.
 7 MS. BROWN: Asked and
 8 answered.
 9 MR. PLACITELLA: That's
 10 not a form -- that's not a form
 11 objection. Please don't do that.
 12 MS. BROWN: It is, asked
 13 and answered --
 14 MR. PLACITELLA: It's
 15 not.
 16 MS. BROWN: -- and you
 17 know there are objections where I
 18 need --
 19 MR. PLACITELLA: That's
 20 definitely not a form objection.
 21 MS. BROWN: -- to
 22 preserve.
 23 THE WITNESS: In
 24 addition to what I said before, I

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1 don't have a recollection right now
 2 of when we first produced documents
 3 in any specific case or what those
 4 documents were.
 5 BY MR. PLACITELLA:
 6 Q. I'm not asking any specific
 7 case.
 8 A. I thought that's what your --
 9 Q. Just give me a year, when was
 10 the first time you turned them over,
 11 because all of the research I've done
 12 didn't show that you turned them over until
 13 sometime after 2010.
 14 MS. BROWN: Well, you're
 15 arguing and testifying, so I object
 16 to that. And he has answered your
 17 question to the best of his
 18 ability. Mr. O'Shaughnessy, if you
 19 would like to repeat your answer
 20 for the third time, please do so.
 21 BY MR. PLACITELLA:
 22 Q. Let me ask the question.
 23 A. I have the question in mind.
 24 And I understand you're not asking me about

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1 a specific case, because you're not naming
2 one. But you are, in essence, because
3 you're asking me when it was first turned
4 over and that would be in some specific
5 case that I can't recall right now.
6 Q. Let me ask you a question this
7 way. Do you have a -- when you left
8 Johnson & Johnson, did you have a record of
9 when you produced what evidence?
10 A. Any record of what was produced
11 would be with the local law firms and the
12 outside law firms that did the actual
13 production.
14 Q. So --
15 A. If they existed.
16 Q. So to get actually all the
17 evidence from all these cases, we'd have to
18 send subpoenas to all the local law firms,
19 right?
20 MS. BROWN: Objection.
21 Lacks foundation, assumes facts,
22 misstates the evidence.
23 THE WITNESS: I'm not
24 going to tell you how to do your

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1 job. I'm just answering questions
2 about where.
3 MR. PLACITELLA: I'm not
4 asking you to --
5 THE WITNESS: -- the
6 documents were and how they were
7 produced.
8 BY MR. PLACITELLA:
9 Q. Yes, sir. But if you didn't
10 take them at Johnson & Johnson, then the
11 only way I can find out where all the
12 evidence is is to actually send subpoenas
13 to the local law firms, right?
14 MS. BROWN: Objection.
15 Misstates the evidence, lacks
16 foundation --
17 THE WITNESS: I don't
18 know.
19 MS. BROWN: -- and is
20 argumentative.
21 THE WITNESS: I don't
22 know.
23 BY MR. PLACITELLA:
24 Q. Okay. Now, can you go to --

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1 well, let me ask you this, if you know, off
2 the top of your head. When was the first
3 lawsuit filed against Johnson & Johnson
4 involving Johnson's Baby Powder?
5 A. I don't know. That would have
6 been before my time with the company.
7 Q. Long before your time, right?
8 A. I don't know. You showed me
9 some cases today that were before I was
10 there.
11 Q. Okay. So can you go to
12 Exhibit 486 in your binder and I'm going to
13 tell you it's in book two.
14 A. I have 485.
15 Q. I need 486.
16 A. I know. And then my next one
17 says 542. And, Mr. Placitella, I'm in
18 additional testing binders?
19 Q. No, no, I'm sorry, your book
20 two. Do you want me to come over and help
21 you?
22 A. I don't think that's necessary.
23 It's here somewhere.
24 MR. TISI: I'll get it.

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1 I'll help him.
2 MR. PLACITELLA: Chris,
3 go help him. This is a logistical
4 nightmare, I understand.
5 MR. TISI: The Musco 2?
6 MR. PLACITELLA: No.
7 It's the regular -- let me find it.
8 THE WITNESS: The
9 regular documents binder.
10 BY MR. PLACITELLA:
11 Q. Yes, JOS on the front. Book
12 two. Look at 446.
13 A. I got it.
14 - - - - -
15 (Privilege Log marked
16 O'Shaughnessy Exhibit 486 for
17 identification.)
18 - - - - -
19 BY MR. PLACITELLA:
20 Q. Okay. And go to 486.1.
21 MS. BROWN: I object to
22 this document on foundation.
23 MR. PLACITELLA: Okay.
24 THE WITNESS: Okay.

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1 BY MR. PLACITELLA:
2 Q. And I'm going to represent to
3 you this is a privilege log that was served
4 upon us by Johnson & Johnson and I'm just
5 going to blow up a section of the log.
6 According to your privilege log, you had
7 pending and anticipated litigation
8 involving baby powder going back to 1974;
9 is that true?
10 MS. BROWN: Objection.
11 Misstates the document and lacks
12 foundation.
13 THE WITNESS: I don't
14 see where that is stated here. Can
15 you point it out to me?
16 BY MR. PLACITELLA:
17 Q. Sure.
18 A. I think if you just scroll down
19 for me a little bit, that might be what you
20 want me to look at.
21 Q. It might be easier to find on
22 the next page. Give me a second.
23 A. Okay.
24 Q. So I'm sorry. Getting late in

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1 the day. Do you see where it talks about,
2 I blew it up. Here, if you look at my
3 screen. Do you see, let's just start with
4 '77, okay?
5 A. In the left.
6 Q. Right. Do you see it says
7 11/7/77 Roger Miller pending anticipated --
8 pending and anticipated litigation, 1977?
9 A. Yes.
10 Q. Okay.
11 MS. BROWN: Objection.
12 Lacks foundation.
13 THE WITNESS: I see
14 where that's read, yes.
15 BY MR. PLACITELLA:
16 Q. Okay. And it goes, and if you
17 keep going down, it goes to 1978, same
18 thing?
19 A. Uh-huh.
20 Q. Okay. And so here's my
21 question. If you go to your -- you agree
22 that once there is pending or anticipated
23 litigation, you were aware that there was a
24 duty to put a litigation hold on the

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1 evidence, correct?
2 MS. BROWN: Your Honor,
3 I object. Counsel is asking
4 Mr. O'Shaughnessy a legal question
5 about his legal analysis and
6 judgment about when it is
7 appropriate for a legal hold to
8 issue. And that is his mental
9 thoughts and impressions, his legal
10 analysis and it's protected.
11 BY MR. PLACITELLA:
12 Q. Let's go to 1049 in your book.
13 A. I have it.
14 - - - - -
15 (Legal Hold Letter dated
16 5/16/03 marked O'Shaughnessy
17 Exhibit 1049 for identification.)
18 - - - - -
19 BY MR. PLACITELLA:
20 Q. Okay. This is a legal hold
21 document that you put out in 2003.
22 A. Okay.
23 Q. Do you see that?
24 A. Yeah.

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1 Q. And do you recognize this?
2 A. I don't recognize it, but I
3 recognize the form of it, yes.
4 Q. And you say in connection with
5 this matter, "It is vital to preserve all
6 documents relating in any way to the below
7 subject." Do you see that?
8 A. Yes.
9 Q. It says "Failure to preserve
10 these materials could result in Court
11 imposed penalties or sanctions on both the
12 company and/or individual employees." Do
13 you see that?
14 A. I do.
15 Q. "Do not discard, destroy or
16 alter in any way any of the documents,"
17 right?
18 A. Yes.
19 Q. Okay. And as of 1983, when you
20 were already in litigation, you had no
21 document retention policy, correct?
22 A. I was not --
23 Q. Johnson & Johnson, I'm talking
24 about.

<p style="text-align: right;">Page 720</p> <p>1 A. I was not at the company in 2 '83. I'm unaware of what they had in 3 place. 4 Q. Okay. Look at J&J 443, please. 5 J&J 443. 6 MS. BROWN: Is that 7 testimony? 8 ----- 9 (Windsor Minerals' Responses to 10 Interrogatories in Westfall case 11 marked O'Shaughnessy Exhibit 443 12 for identification.) 13 ----- 14 BY MR. PLACITELLA: 15 Q. For the record is responses of 16 Windsor Minerals to interrogatories and the 17 person who is supplying the information is 18 Roger Miller, do you see that? 19 A. I do. 20 Q. And if you go to 443.28. 21 A. Yes. 22 Q. Or actually 27. 23 A. Okay. 24 Q. Interrogatory 35.</p>	<p style="text-align: right;">Page 722</p> <p>1 second page was a letter sent by you 2 attaching it in the Coker case, correct? 3 A. Yes. 4 ----- 5 (Document Preservation Notice 6 Bates JNJTAL000949679 to 949681 7 marked O'Shaughnessy Exhibit 1051 8 for identification.) 9 ----- 10 BY MR. PLACITELLA: 11 Q. Okay. And as you sit here 12 today, are you aware of any document 13 retention hold put out by Johnson & Johnson 14 before this time? 15 A. I don't recall. There may have 16 been. I might have put out a hold before 17 this. I'm not sure. 18 Q. Okay. Because I haven't found 19 one in the production. So I'm asking from 20 your recollection, do you recall any hold 21 before 1997? 22 MS. BROWN: He answered 23 that. I object. 24 THE WITNESS: I don't</p>
<p style="text-align: right;">Page 721</p> <p>1 A. Okay. 2 Q. You're asked specifically 3 whether you have a document retention or 4 destruction policy. Do you see that? 5 A. I do. 6 Q. Okay. And on the next page, 7 the answer is no. Right? 8 A. That's the answer to the 9 question. 10 MS. BROWN: I object. 11 This lacks foundation. 12 BY MR. PLACITELLA: 13 Q. And the first notice that ever 14 went out for a litigation hold was put out 15 by you, correct? 16 MS. BROWN: Objection. 17 Assumes facts. Lacks foundation. 18 THE WITNESS: I don't 19 know that. 20 BY MR. PLACITELLA: 21 Q. Okay. Go to 1051. 1051 is an 22 October 10, 1997, document preservation 23 notice that went to a whole bunch of people 24 including Hopkins, et cetera. And the</p>	<p style="text-align: right;">Page 723</p> <p>1 recall any, but I'm sure there was 2 one, because we didn't suffer from 3 a lack of lawsuits. 4 BY MR. PLACITELLA: 5 Q. Okay. Right. And if there 6 were lawsuits, then you should have put in 7 a hold on the evidence, correct? 8 A. If there was a lawsuit, the 9 policy was to issue a hold notice with 10 respect to that particular case. 11 Q. At least when you were in 12 control? 13 A. No, I think it was there, and I 14 wasn't in control of hold notices, I was 15 managing my cases and that would be part of 16 my responsibility to issue the hold notice, 17 but I wasn't in control of them for other 18 cases or other lawyers. What I'm -- that's 19 it. 20 Q. So given your testimony, can 21 you tell me where are all the files from 22 all these lawsuits? 23 MS. BROWN: Objection. 24 Lacks foundation. Assumes facts.</p>

<p style="text-align: right;">Page 724</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. Let's say before 2010. Where</p> <p>3 are all the files?</p> <p>4 MS. BROWN: Same</p> <p>5 objections.</p> <p>6 THE WITNESS: I'm sorry,</p> <p>7 I was stuck -- I was looking at</p> <p>8 this, because I kind of had my</p> <p>9 refreshed -- I'm refreshing my</p> <p>10 memory a little bit about the hold</p> <p>11 notices.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Please.</p> <p>14 A. So I see that this was sent to</p> <p>15 Hernando Arbelaez and then he in turn sent</p> <p>16 it to other people at the company. So you</p> <p>17 asked me if this was the first hold notice</p> <p>18 and I don't think it was, because I think,</p> <p>19 you know, as time went on, you know, we</p> <p>20 tried to always try to improve our</p> <p>21 procedures round hold notices and this --</p> <p>22 sending the hold notice to one person at</p> <p>23 the other company to distribute it, I don't</p> <p>24 think that was the initial way we did it.</p>	<p style="text-align: right;">Page 726</p> <p>1 yeah.</p> <p>2 Q. Okay. So my question is what</p> <p>3 happened to all the hold notices before</p> <p>4 1997?</p> <p>5 MS. BROWN: Asked and</p> <p>6 answered. Assumes facts. Lacks</p> <p>7 foundation.</p> <p>8 THE WITNESS: Sitting</p> <p>9 here now, I don't recall.</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. Okay. Now, the hold notice you</p> <p>12 put out is not just for the current case,</p> <p>13 but when you anticipate further cases, it's</p> <p>14 to preserve evidence for all cases going</p> <p>15 forward, right?</p> <p>16 A. No, I think -- I think when we</p> <p>17 issued hold notices, they were for a</p> <p>18 specific case.</p> <p>19 Q. So even if you anticipated a</p> <p>20 case, you didn't put a hold notice out?</p> <p>21 A. No, I think maybe we would put</p> <p>22 another one out, because sometimes the</p> <p>23 case -- each case is different and each</p> <p>24 case is treated individually. And so</p>
<p style="text-align: right;">Page 725</p> <p>1 I think we issued some hold notices</p> <p>2 directly to people at the company that we</p> <p>3 think were involved and then I think what</p> <p>4 happened later on is there would be people</p> <p>5 from the company who were assigned to</p> <p>6 distribute hold notices not only for, you</p> <p>7 know, personal injury litigation like this,</p> <p>8 but for any kind of litigation. So that's</p> <p>9 why I'm thinking this wasn't the first hold</p> <p>10 notice.</p> <p>11 Q. Okay. Fair enough.</p> <p>12 A. And I'm sorry, I interrupted</p> <p>13 you.</p> <p>14 Q. No, that's fine. That's fine.</p> <p>15 We're trying to get to the bottom. The</p> <p>16 hold notice was, you know, it was a serious</p> <p>17 issue, right?</p> <p>18 A. Absolutely.</p> <p>19 Q. Okay. You wouldn't throw out</p> <p>20 hold notices, right, that's part of the</p> <p>21 historical files for litigation?</p> <p>22 A. We would keep the hold notices,</p> <p>23 you know, according to, in a particular</p> <p>24 file as long as we kept that file, I guess,</p>	<p style="text-align: right;">Page 727</p> <p>1 sometimes, the documents that you would</p> <p>2 hold for one case doesn't necessarily</p> <p>3 translate to the other. So no, we would --</p> <p>4 I don't think we had, like, generic hold</p> <p>5 notices.</p> <p>6 Q. So when you anticipated --</p> <p>7 A. Except I think maybe the mass,</p> <p>8 when we started getting mass torts, it</p> <p>9 might have been a little bit different, but</p> <p>10 I don't know.</p> <p>11 Q. But when you say you</p> <p>12 anticipated future cases, didn't you put a</p> <p>13 hold notice at that point in time to</p> <p>14 preserve the evidence?</p> <p>15 A. I don't recall whether we did</p> <p>16 or did not.</p> <p>17 Q. Well, we know that you were</p> <p>18 involved in litigation going back to the</p> <p>19 early '70s and as of 19 -- J&J --</p> <p>20 A. Oh, J&J, yes.</p> <p>21 Q. Yes. And as of 1983, there was</p> <p>22 no hold notice, right?</p> <p>23 A. I don't know whether there was</p> <p>24 a hold notice or not. But the hold notices</p>

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1 were issued in individual cases, so I'm not
 2 sure where --
 3 Q. So this is clear, because it's
 4 important --
 5 A. Sure.
 6 Q. -- so you're saying even when
 7 you anticipated litigation, you did not
 8 send out hold notices, only when you were
 9 actually sued?
 10 MS. BROWN: Objection.
 11 Misstates testimony.
 12 THE WITNESS: I don't
 13 recall, I don't recall if that
 14 would provoke a hold notice. I'm
 15 thinking no, because without the
 16 allegations in the complaint, it
 17 would be difficult to say what
 18 should be held.
 19 BY MR. PLACITELLA:
 20 Q. Okay. Well, you, for example,
 21 indicated to Mr. Tisi that you anticipated
 22 ovarian cancer cases related to talc from
 23 the early 1990s. Do you recall that
 24 testimony?

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1 A. Yes.
 2 Q. So did you put a hold notice
 3 out at that point for the ovarian evidence?
 4 A. I don't think we would have
 5 until we had a case come in.
 6 Q. Oh, okay. And what about when
 7 testing was done, right, and samples were
 8 taken in the testing, did your litigation
 9 hold notices go to tell people who are
 10 involved in the testing to retain samples?
 11 A. I don't know whether it did or
 12 not. I would have to look at the hold
 13 notice.
 14 Q. Well, here's the reason I'm
 15 asking the question.
 16 A. Sure.
 17 Q. Can you go to J&J 355, which is
 18 in the JOS book.
 19 A. I got it.
 20 -----
 21 (Letter dated 1/28/1987 Bates
 22 JNJALC0000387714 to 387716 marked
 23 O'Shaughnessy Exhibit 355 for
 24 identification.)

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1 -----
 2 BY MR. PLACITELLA:
 3 Q. Okay. 355 is the --
 4 A. I'm going to get to it.
 5 Q. I'm sorry.
 6 A. It's at the end of it. I have
 7 it.
 8 Q. I want to show you something
 9 while we're at it. Give me one second. Do
 10 you see -- remember the Edley case and
 11 Roger Miller attaching as proof the report
 12 from McCrone with the code language, no
 13 quantifiable amounts?
 14 A. Yes, we discussed that, yeah.
 15 Q. Okay. And so clearly this was
 16 a test involved in litigation, correct?
 17 MS. BROWN: Objection.
 18 Misstates the document.
 19 THE WITNESS: I'm not
 20 sure what you mean by that.
 21 BY MR. PLACITELLA:
 22 Q. Well, you're attaching test
 23 results to an affidavit filed in litigation
 24 saying what the results show.

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1 A. Refresh me, was this attached
 2 to an affidavit?
 3 Q. Yeah, if you flip forward, it
 4 was attached to the Miller affidavit?
 5 A. Okay.
 6 Q. Right.
 7 A. Flip forward.
 8 Q. It's in 188.3, remember?
 9 A. What case was that?
 10 Q. Remember in the Edley case,
 11 look at the screen in front of you.
 12 A. I don't think I was around for
 13 the Edley case at Johnson.
 14 Q. Yeah, I understand. I'm asking
 15 this way -- you said that. But you
 16 actually were around when the affidavit was
 17 filed.
 18 A. What's the date of it?
 19 Q. It was in July of '87.
 20 A. Yes, then I would have been,
 21 but I don't think I was responsible for the
 22 talc litigation at that time.
 23 Q. All right. But the same
 24 affidavit was filed a year later when you

<p style="text-align: right;">Page 732</p> <p>1 were in charge, remember that?</p> <p>2 A. In essence, yes.</p> <p>3 Q. Okay. And the last page of the</p> <p>4 Edley affidavit attaches a report from</p> <p>5 McCrone, right?</p> <p>6 A. It does.</p> <p>7 Q. Okay. Hold that there. So if</p> <p>8 I go to 355, right, that's the same exact</p> <p>9 report. Do you see that? They're side by</p> <p>10 side.</p> <p>11 A. I'm looking, they look to be</p> <p>12 the same except for Exhibit A is written on</p> <p>13 one in hand. Do you see where I'm</p> <p>14 referring to?</p> <p>15 Q. Yes, sir.</p> <p>16 A. That's the only difference I</p> <p>17 see.</p> <p>18 Q. But it even has the same</p> <p>19 received stamp on it.</p> <p>20 A. This quick look at it, yeah.</p> <p>21 Q. Same exact report?</p> <p>22 A. Right.</p> <p>23 Q. But what was not attached to</p> <p>24 the Edley report was the next page of 355.</p>	<p style="text-align: right;">Page 734</p> <p>1 policy is to hold samples for 30</p> <p>2 days after the analysis, right?</p> <p>3 THE WITNESS: I can't</p> <p>4 interpret a document from this time</p> <p>5 period from another company, it</p> <p>6 looks like, right?</p> <p>7 BY MR. PLACITELLA:</p> <p>8 Q. Well, sir, it went to your</p> <p>9 company --</p> <p>10 A. I know, before I --</p> <p>11 Q. -- and it was a policy that was</p> <p>12 being executed in the context of litigation</p> <p>13 that your company was handling.</p> <p>14 MS. BROWN: Objection.</p> <p>15 Misstates the testimony.</p> <p>16 THE WITNESS: If it's a</p> <p>17 policy, it's the policy of McCrone.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. Sir, they're working for you,</p> <p>20 Johnson & Johnson?</p> <p>21 A. I understand.</p> <p>22 Q. Did you tell them don't destroy</p> <p>23 the samples, because they're being used in</p> <p>24 litigation?</p>
<p style="text-align: right;">Page 733</p> <p>1 Do you see that?</p> <p>2 A. I don't know if that's the next</p> <p>3 page or not.</p> <p>4 Q. It's the very next page. It's</p> <p>5 entitled "please note."</p> <p>6 A. Yeah, I know.</p> <p>7 Q. Do you see that?</p> <p>8 A. I know what it says. But I</p> <p>9 don't know what that's part of and I didn't</p> <p>10 have anything to do with the preparation of</p> <p>11 the affidavit or why that particular</p> <p>12 affidavit had an exhibit attached to it.</p> <p>13 It might have been something relevant to</p> <p>14 the case or what the lawyers were</p> <p>15 discussing. I just don't know.</p> <p>16 Q. That's not the point of my</p> <p>17 question.</p> <p>18 A. I know, but you're asking --</p> <p>19 Q. The second page says that the</p> <p>20 samples are being destroyed --</p> <p>21 MS. BROWN: Objection.</p> <p>22 Misstates the document.</p> <p>23 MR. PLACITELLA: --</p> <p>24 correct? It says our present</p>	<p style="text-align: right;">Page 735</p> <p>1 A. I don't know they are</p> <p>2 destroying samples.</p> <p>3 Q. It says "Our present policy is</p> <p>4 to hold samples for 30 days after issuance</p> <p>5 of the analysis and at no additional</p> <p>6 charge. At the end of 30 days, samples</p> <p>7 will be disposed." Do you see that?</p> <p>8 A. At the end of 30 days, "Samples</p> <p>9 will be disposed of unless a written</p> <p>10 request to return has been received in our</p> <p>11 office."</p> <p>12 Q. Did you ever send such a</p> <p>13 request?</p> <p>14 A. I wasn't handling the</p> <p>15 litigation.</p> <p>16 Q. The entire time that you worked</p> <p>17 for Johnson & Johnson when you were</p> <p>18 handling the litigation, did you ever tell</p> <p>19 McCrone don't destroy the samples, because</p> <p>20 they're being used for litigation?</p> <p>21 A. I don't recall the specific</p> <p>22 discussions and communications I had with</p> <p>23 McCrone.</p> <p>24 Q. Okay.</p>

<p style="text-align: right;">Page 736</p> <p>1 A. Obviously, I had some, because 2 you've shown them to me. And so although I 3 don't recall specific discussions, if 4 something came up in a lawsuit, which 5 called for us to preserve documents that we 6 knew were with another company, generally, 7 we took those steps. 8 Q. Sir, it's clear from this 9 evidence, is it not, that Johnson & Johnson 10 was being advised during the time 11 litigation was pending that McCrone was 12 destroying the samples, the very samples 13 that Johnson & Johnson was relying upon to 14 defend itself? 15 MS. BROWN: Misstates 16 facts, misstates evidence, and 17 lacks foundation. 18 THE WITNESS: No, I 19 don't agree with that. 20 BY MR. PLACITELLA: 21 Q. Okay. We'll let the jury 22 decide. Did you know -- can you go to your 23 book one, your book one, Exhibit 198. 24 MR. TISI: I'll help you</p>	<p style="text-align: right;">Page 738</p> <p>1 (Letter dated 11/26/90 and 2 Attachment Bates 3 JNJMX__68__000012851 to 12859 4 marked O'Shaughnessy Exhibit 198 5 for identification.) 6 ----- 7 BY MR. PLACITELLA: 8 Q. Sure. 198 is a report from 9 McCrone to Cyprus Minerals Corporation from 10 1990. Do you see that? 11 A. Yes, I do. 12 Q. Okay. And do you see they use 13 the magic language, "no quantifiable 14 amounts"? 15 MS. BROWN: I object to 16 the form of the question, 17 argumentative, lacks foundation. 18 BY MR. PLACITELLA: 19 Q. Do you see that? 20 A. My mic fell off. 21 Q. Yeah, sure. 22 A. You know, you're saying magic, 23 you're characterizing it in your way. I 24 see where it says "no quantifiable</p>
<p style="text-align: right;">Page 737</p> <p>1 here. It's getting late. 2 THE WITNESS: I think 3 it's this one, Chris. 4 MR. TISI: Oh, okay, I 5 was going to try to put it over 6 here, so you could find it. 7 THE WITNESS: Well, now 8 I dumped -- all right. Well, that 9 was about to happen, wasn't it? 10 MR. TISI: Yeah, you 11 know that's my life -- 12 THE WITNESS: I got it, 13 Chris, thanks. 14 MS. BROWN: 198? 15 MR. PLACITELLA: 198. 16 MR. TISI: Why don't we 17 take a quick break so you can -- 18 THE WITNESS: No, I'm 19 all right. Let's go. 20 MR. TISI: Are you sure? 21 THE WITNESS: Yeah, I'm 22 fine. Thanks, Chris. I have 198, 23 Mr. Placitella. 24 -----</p>	<p style="text-align: right;">Page 739</p> <p>1 amounts." 2 Q. Fair enough. And could you go 3 to page 4? 4 A. I have it. 5 Q. And do you see that there are 6 actual backup testing data attached to this 7 report? 8 A. You know, I don't -- I'm not 9 trying to be difficult, Mr. Placitella, I'm 10 really not. But you're showing me 11 documents from a long time ago for testing 12 reports that if they are testing, I don't 13 recognize these documents nor can I 14 interpret them. And I'm not trying to be 15 difficult, but -- 16 Q. I know you're not trying to be 17 difficult. 18 A. There's other people at the 19 company who can address this way better 20 than I can. 21 Q. Yeah, but that's not the point 22 of my question, so give me a chance. Okay? 23 A. Absolutely. 24 Q. Okay. So do you see that</p>

<p style="text-align: right;">Page 740</p> <p>1 despite finding no quantifiable amounts, 2 the backup data actually lists chrysotile 3 fiber? 4 MS. BROWN: I object. 5 That misstates the document and 6 lacks foundation. 7 THE WITNESS: I can't 8 comment on that. 9 BY MR. PLACITELLA: 10 Q. Okay. 11 A. I really can't interpret it. 12 Q. Here's my question. Do you see 13 at least that this report has all this 14 backup data? I'm not asking you to 15 interpret. 16 A. My eyes are glazing over at 17 this time. 18 Q. Okay. Has all this backup 19 data, do you see that? 20 A. It has graphs and charts. I 21 don't know if it's backup data. 22 Q. Exactly. 23 A. It's attached to the report. 24 Q. How come none of the documents</p>	<p style="text-align: right;">Page 742</p> <p>1 know how many, and I don't know if 2 these were among them. But you're 3 asking me assuming that, it sounds 4 like you're assuming we consciously 5 made an effort not to turn 6 documents over and that was not 7 done. 8 BY MR. PLACITELLA: 9 Q. No, sir, that's not what I'm 10 asking. I'm asking -- 11 MS. BROWN: Well, let 12 him finish though, Chris. 13 BY MR. PLACITELLA: 14 Q. No, what I'm asking you is why 15 didn't you retain the backup data for any 16 of the McCrone reports or any other 17 reports? 18 MS. BROWN: Assumes 19 facts, misstates the evidence, 20 lacks foundation. 21 THE WITNESS: The 22 company would have its own process 23 with how it dealt with McCrone and 24 what tests they received and what</p>
<p style="text-align: right;">Page 741</p> <p>1 you turned over had the same graphs and 2 charts? 3 MS. BROWN: That assumes 4 facts and lacks foundation. 5 BY MR. PLACITELLA: 6 Q. Didn't you -- 7 A. Me personally? 8 Q. You, Johnson & Johnson, when 9 you turned over, finally turned over the 10 testing documents, why didn't you have the 11 facts and data attached to the McCrone 12 reports? 13 MS. BROWN: That assumes 14 facts and lacks foundation and he's 15 not testifying as Johnson & 16 Johnson. 17 THE WITNESS: In the 18 cases I handle, when we turned over 19 documents, we turned over documents 20 that we felt were responsive to the 21 discovery process in cases that we 22 were litigating. So McCrone 23 documents were probably turned 24 over, I don't know which, I don't</p>	<p style="text-align: right;">Page 743</p> <p>1 data they received for the tests 2 and you would have to discuss this 3 with someone at the company. 4 BY MR. PLACITELLA: 5 Q. Who shall I ask? 6 A. You should ask some of the 7 people that you might have spoken to 8 already, like Hopkins -- 9 Q. He didn't know. 10 A. -- and others in the R&D. 11 Q. Give me somebody else. 12 MS. BROWN: Chris. 13 BY MR. PLACITELLA: 14 Q. Who else should I ask? Okay. 15 Let's go to -- 16 A. I'm thinking, but you know -- 17 Q. Go ahead. 18 A. I'm thinking, but you're asking 19 me and, you know, technical people at the 20 company may have this information. 21 Q. The problem is they're all 22 gone, dead, or retired, right? 23 MS. BROWN: I object to 24 the argumentative nature of your</p>

<p style="text-align: right;">Page 744</p> <p>1 question.</p> <p>2 THE WITNESS: I don't</p> <p>3 know if that's true. You know,</p> <p>4 through the passage of time that's</p> <p>5 normally what happens.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. Okay. So let's go to 456 in</p> <p>8 your book two.</p> <p>9 A. I have it.</p> <p>10 - - - - -</p> <p>11 (Report dated 11/23/83 Bates</p> <p>12 JNJ 000240739 to 40742 marked</p> <p>13 O'Shaughnessy Exhibit 456 for</p> <p>14 identification.)</p> <p>15 - - - - -</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. 456 is a report from</p> <p>18 November 23, 1993, from Denton. Do you</p> <p>19 know who Denton is?</p> <p>20 A. I don't know.</p> <p>21 Q. To William Ashton, you know</p> <p>22 him, right?</p> <p>23 A. I do.</p> <p>24 Q. He's dead though, right?</p>	<p style="text-align: right;">Page 746</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. "However, several former are</p> <p>3 Hammondsville minors are still employed at</p> <p>4 the mine and they provided us with some</p> <p>5 useful information." Do you see that?</p> <p>6 A. "As to the nature of the</p> <p>7 underground works."</p> <p>8 Q. Okay. So did you know before</p> <p>9 today that all the documents from the mine</p> <p>10 were destroyed before you turned over the</p> <p>11 mine to Cyprus?</p> <p>12 MS. BROWN: That</p> <p>13 misstates the evidence and assumes</p> <p>14 facts and lacks foundation.</p> <p>15 THE WITNESS: I don't</p> <p>16 know what he was referring to and I</p> <p>17 don't know exactly what was kept or</p> <p>18 not kept and what documents he's</p> <p>19 talking about. So I can't comment</p> <p>20 on someone else's memo.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. Would that have satisfied your</p> <p>23 litigation hold?</p> <p>24 A. I'm sorry?</p>
<p style="text-align: right;">Page 745</p> <p>1 A. Yes, he is.</p> <p>2 Q. So the truth died with him,</p> <p>3 right?</p> <p>4 MS. BROWN: Objection.</p> <p>5 Chris Placitella, I know it's</p> <p>6 getting late, but the questions,</p> <p>7 they're so inappropriate.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. So let's go to 456.3.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. This is 1993.</p> <p>12 A. Okay.</p> <p>13 Q. The note in this Johnson &</p> <p>14 Johnson document says "The specifics of the</p> <p>15 mining operation at Hammondsville are</p> <p>16 uncertain, as most of the pre-Luzenac</p> <p>17 records were destroyed by the mine</p> <p>18 management just prior to the J&J</p> <p>19 divestiture and the Cyprus purchase." Do</p> <p>20 you see that?</p> <p>21 A. Yes, I do.</p> <p>22 MS. BROWN: This lacks</p> <p>23 foundation.</p> <p>24</p>	<p style="text-align: right;">Page 747</p> <p>1 MS. BROWN: I object.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. Would that have satisfied your</p> <p>4 litigation hold?</p> <p>5 A. You're mixing apples and</p> <p>6 oranges.</p> <p>7 MS. BROWN: I object.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. Okay. So was there a</p> <p>10 litigation hold in place in 1993 when</p> <p>11 litigation was pending that would have</p> <p>12 prevented the destruction of these records?</p> <p>13 MS. BROWN: Objection.</p> <p>14 Misstates the evidence. Assumes</p> <p>15 facts.</p> <p>16 THE WITNESS: I don't</p> <p>17 know, I don't know what records</p> <p>18 he's referring to and I'm not sure</p> <p>19 if there was a specific hold in</p> <p>20 place.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. Okay. Did you know that</p> <p>23 Johnson & Johnson maintained a specific</p> <p>24 file for all of their contact, all their</p>

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1 phone calls with the FDA? Did you know
2 that?

3 A. I don't know what files they
4 maintain with the FDA, but they were pretty
5 careful about how they recorded their
6 contacts with the agency.

7 Q. Can you go to 491. 491 is a
8 January 4, 1984, memo from --

9 A. I'm sorry.

10 MS. BROWN: Hold on.
11 Let him get there and I object as
12 lacking foundation.

13 THE WITNESS: I got it
14 now.

15 - - - - -

16 (Memo dated 1/4/84 marked
17 O'Shaughnessy Exhibit 491 for
18 identification.)

19 - - - - -

20 BY MR. PLACITELLA:
21 Q. -- From Robert Kohler with a
22 copy to Bruce Semple. He was the medical
23 director, right?

24 A. I don't know what he was at the

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1 time. I wasn't with the company.
2 Q. Okay. And it's a memo to the
3 FDA call file. Do you see that?

4 A. Yes.

5 Q. Did you ever put a litigation
6 hold out that said to maintain copies of
7 the FDA call file?

8 A. I don't know what the FDA call
9 file was. I wasn't with the company at the
10 time. All I can tell you is when we put
11 out a hold notice, we would put out the
12 hold notice and include any documents
13 specific to the hold notice in the case
14 that we thought were relevant and should be
15 preserved.

16 Q. Okay. So I want to show you --
17 I still have no audio? Let me start it
18 again. Did you have a -- should the FDA
19 call file related to asbestos and talc have
20 been retained pursuant to a document
21 retention?

22 MS. BROWN: That assumes
23 facts, misstates this document, and
24 lacks foundation.

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1 THE WITNESS: I don't
2 know what procedures were in place
3 in 1984.

4 BY MR. PLACITELLA:
5 Q. Well, I'm talking about ever.
6 A. Oh, ever?
7 Q. Yes, sir.
8 A. So whatever files they had that
9 was required to be held by the hold notice
10 should be held.

11 Q. Because I asked Susan Nicholson
12 who was produced as the person with the
13 most knowledge about your interaction with
14 the FDA by you, Johnson & Johnson, this is
15 what she said about the call file.

16 MS. BROWN: Object to
17 selective playing of testimony.
18 Lacks foundation.

19 - - - - -

20 (Video Clip was played.)

21 - - - - -

22 BY MR. PLACITELLA:
23 Q. So I guess Susan Nicholson
24 never got the hold notice for the FDA call

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1 file?

2 MS. BROWN: Okay. That
3 misstates testimony.

4 THE WITNESS: I don't
5 know what you're talking about.

6 MS. BROWN: Assumes
7 facts, lacks foundation, and is
8 argumentative.

9 BY MR. PLACITELLA:
10 Q. So do you have any information
11 that you told the people handling the FDA
12 call file that they should preserve the
13 documents?

14 MS. BROWN: I object and
15 instruct not to answer. That would
16 be legal advice or legal direction
17 and that's protected.

18 MR. PLACITELLA: Can I
19 get a ruling on that?

20 JUDGE SCHNEIDER: Can I
21 have the court reporter to please
22 repeat the question?

23 - - - - -

24 (Whereupon, the reporter read

<p style="text-align: right;">Page 752</p> <p>1 back as requested.)</p> <p>2 - - - - -</p> <p>3 JUDGE SCHNEIDER:</p> <p>4 Objection overruled. I think it's</p> <p>5 discoverable to find out and an</p> <p>6 appropriate area of inquiry is who</p> <p>7 received the hold notice, which is,</p> <p>8 obviously, relevant to whether</p> <p>9 appropriate documents have been</p> <p>10 preserved or exist. So objection</p> <p>11 overruled.</p> <p>12 THE WITNESS: I'm sorry,</p> <p>13 could you read it back, please?</p> <p>14 - - - - -</p> <p>15 (Whereupon, the reporter read</p> <p>16 back as requested.)</p> <p>17 - - - - -</p> <p>18 THE WITNESS: I don't</p> <p>19 recognize what -- this is a</p> <p>20 document from 1984. I don't</p> <p>21 recognize what FDA call file may</p> <p>22 be. I don't know if it's a general</p> <p>23 file that they would be keeping</p> <p>24 there or it's this individual's</p>	<p style="text-align: right;">Page 754</p> <p>1 we take a break soon, we have been</p> <p>2 going over an hour?</p> <p>3 MR. PLACITELLA: Okay.</p> <p>4 I was trying to finish by 4:00, but</p> <p>5 we'll take a break.</p> <p>6 MS. BROWN: If you're</p> <p>7 going to finish in 13 minutes --</p> <p>8 MR. PLACITELLA: I was</p> <p>9 going to try, but we'll take a</p> <p>10 break.</p> <p>11 MS. BROWN: Okay.</p> <p>12 THE VIDEOGRAPHER: Off</p> <p>13 the record at 3:47 p.m.</p> <p>14 - - - - -</p> <p>15 (A recess was taken at this time.)</p> <p>16 - - - - -</p> <p>17 THE VIDEOGRAPHER: We</p> <p>18 are back on the record at 4:05.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. Okay. I'm going to refer back</p> <p>21 to 219, I don't think you have to pull it</p> <p>22 out of your binder, because I'm going to</p> <p>23 ask you one question. This is a document</p> <p>24 that you've seen a number of times already</p>
<p style="text-align: right;">Page 753</p> <p>1 file that he called the FDA call</p> <p>2 file. All I can tell you is if we</p> <p>3 issued a hold notice that called</p> <p>4 for the retention of FDA</p> <p>5 communications, we would expect</p> <p>6 those communications to be held.</p> <p>7 BY MR. PLACITELLA:</p> <p>8 Q. So Susan Nicholson testified</p> <p>9 that there is no FDA call file in paper.</p> <p>10 What happened to it?</p> <p>11 MS. BROWN: No, no, that</p> <p>12 misstates her testimony and lacks</p> <p>13 foundation with this witness.</p> <p>14 BY MR. PLACITELLA:</p> <p>15 Q. What happened to it?</p> <p>16 MS. BROWN: The same</p> <p>17 objection.</p> <p>18 THE WITNESS: I</p> <p>19 testified, I don't recognize what a</p> <p>20 call file is.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. Okay. So let me ask you</p> <p>23 another question.</p> <p>24 MS. BROWN: Chris, can</p>	<p style="text-align: right;">Page 755</p> <p>1 where in the Coker case, Luzenac provided</p> <p>2 you with all of their testing documents</p> <p>3 back to 1982. Do you see that?</p> <p>4 A. The talc test with -- I don't</p> <p>5 know if it was all of it, but with</p> <p>6 documents related to talc testing and Val</p> <p>7 Chisone deposit dating back to 1982.</p> <p>8 Q. What happened to those</p> <p>9 documents?</p> <p>10 MS. BROWN: Objection.</p> <p>11 Foundation.</p> <p>12 THE WITNESS: I don't</p> <p>13 recall specifically, but it would</p> <p>14 have been in my practice to turn</p> <p>15 them over so our lawyers would have</p> <p>16 them.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. The lawyers in the case?</p> <p>19 A. Yeah.</p> <p>20 Q. So last document I want to ask</p> <p>21 you about is 418.</p> <p>22 A. Okay. Yes, I have it.</p> <p>23 - - - - -</p> <p>24 (Email String dated 11/21/08</p>

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1 marked O'Shaughnessy Exhibit 418
 2 for identification.)
 3 -----
 4 BY MR. PLACITELLA:
 5 Q. Okay. 418 is an email dated
 6 November 21, 2008, subject, baby powder,
 7 from Tim McCarthy. Do you see that?
 8 A. Yes.
 9 Q. This would have been a time
 10 when your litigation hold would have been
 11 in effect, true?
 12 A. I'm assuming there might have
 13 been one in place at this time, yes.
 14 MS. BROWN: I object to
 15 this document as lacking
 16 foundation.
 17 BY MR. PLACITELLA:
 18 Q. Okay. And if we just go to the
 19 bottom, it talks about baby powder, "Hi
 20 Tim, I don't think you would want to share
 21 this document, but FYI, I thought you would
 22 find it interesting." Do you see that?
 23 A. I do.
 24 Q. And then below it, it says

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1 "More seriously, we have about four file
 2 drawers of information on talc over here."
 3 Do you see that?
 4 A. Yes.
 5 Q. What happened to that
 6 information?
 7 MS. BROWN: Objection,
 8 assumes facts.
 9 BY MR. PLACITELLA:
 10 Q. Was that ever turned over to
 11 you as part of the litigation hold?
 12 MS. BROWN: Assumes
 13 facts. Lacks foundation.
 14 THE WITNESS: I don't
 15 know what this person is
 16 specifically referring to. Though
 17 I am familiar though in general
 18 when we do go to collect documents,
 19 there's documents, they're not all
 20 in one place. So you go to
 21 different places to collect them
 22 and you speak to different people
 23 to try and find out where they kept
 24 the files and where their files are

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1 kept. It looks like, you know,
 2 that this might have been material
 3 if it came to our attention that we
 4 definitely would have collected.
 5 And I don't know if we did or we
 6 didn't. And I don't know the
 7 subject of these emails, whether
 8 they involved, you know, the
 9 document collection process or not
 10 and maybe that's why they were
 11 talking about it.
 12 BY MR. PLACITELLA:
 13 Q. Okay. How do we find that out?
 14 Who would I ask?
 15 A. I don't know, I didn't read the
 16 whole email, but -- I didn't read the whole
 17 email.
 18 Q. Okay. Can we go -- give me an
 19 Elmo. Okay. You stated before that Blount
 20 telling J&J Johnson's Baby Powder does
 21 not -- does have asbestos, not a secret.
 22 Did I get that right?
 23 A. I think what she said in her
 24 report to the lawyers, the letter that was

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1 sent to me was that she found trace amounts
 2 in cosmetic talc products, including
 3 Johnson & Johnson.
 4 Q. And you said that's not a
 5 secret, right?
 6 A. I forget the way you
 7 characterized it and I would really want to
 8 know how I responded, because you were
 9 calling it a secret and as if, you know, it
 10 was maintained like that by the company and
 11 I don't think that's correct. So that's
 12 what I meant by not a secret.
 13 Q. Okay. So let me ask you then.
 14 Did you tell the FDA that?
 15 A. Tell the FDA what?
 16 Q. That Alice Blount told you
 17 specifically that the baby powder she
 18 tested had asbestos in it.
 19 MS. BROWN: That
 20 misstates facts.
 21 THE WITNESS: I think I
 22 told you before, I don't
 23 communicate with the FDA, Mr.
 24 Placitella, the company does.

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1 BY MR. PLACITELLA:
2 Q. All right. So did you ever tell
3 the FDA?
4 MS. BROWN: Same
5 objection. Misstates facts.
6 THE WITNESS: I don't
7 communicate with the FDA, so I
8 wouldn't tell them that or anything
9 else.
10 BY MR. PLACITELLA:
11 Q. Do you have any information
12 that Johnson & Johnson told the FDA?
13 A. I didn't finish my answer. I
14 don't know if you caught it, I was just
15 about finished the prior answer, but if
16 not, I want that clear.
17 Q. Let me ask the question again.
18 A. Could you read it back to me
19 please?
20 Q. Let me ask the question again?
21 A. Oh, sure.
22 Q. Do you have any information
23 that Johnson & Johnson told the FDA about
24 Alice Blount finding asbestos in Johnson's

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1 Baby Powder?
2 MS. BROWN: Objection.
3 Misstates the evidence.
4 THE WITNESS: I don't
5 know exactly what the company
6 communicated with FDA about. There
7 was always communication between
8 the company, I think, and the FDA,
9 so I don't know what it might have
10 been. I can't guess at that.
11 BY MR. PLACITELLA:
12 Q. Should they have told them?
13 MS. BROWN: Objection.
14 THE WITNESS: I don't
15 know.
16 BY MR. PLACITELLA:
17 Q. Oh, okay. So I'll just put "I
18 don't know." Okay?
19 A. No, no, no.
20 Q. That's what you just told me.
21 A. You're putting I don't know as
22 if I -- somehow that means that they did
23 not tell the FDA. Something that I don't
24 even know, you know, that they knew --

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1 Q. Well, you don't even
2 know whether you should have told them --
3 MS. BROWN: Wait. Let
4 him finish. Let him finish and
5 don't argue with him, please.
6 MR. PLACITELLA: Go
7 ahead finish your answer.
8 THE WITNESS: You know,
9 it has been a long four days --
10 BY MR. PLACITELLA:
11 Q. It sure has.
12 A. -- Mr. Placitella, but I don't
13 really appreciate you waiving your hand at
14 me and laughing at me when I'm giving you
15 my answers. I don't think it's right. I
16 have been trying my best to answer these
17 questions about 25 years ago and I'm doing
18 my best and I know I said I don't recall to
19 a lot of questions, but that's 25 years ago
20 and, you know, and if you asked me these
21 questions way back then, I probably would
22 have had the answers to an awful lot of
23 them.
24 Q. What was my question, sir?

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1 Move to strike your response. What was my
2 question?
3 A. I'm not sure at this point.
4 Q. Okay. Move to strike your
5 response.
6 A. It's in the record though.
7 Q. Do you have any information
8 that the Blount findings of asbestos in
9 Johnson's Baby Powder were communicated to
10 the FDA, yes or no?
11 MS. BROWN: Objection.
12 Misstates the evidence and lacks
13 foundation.
14 THE WITNESS: I don't
15 have any information really about
16 the company's, all the company's
17 communications with the FDA. You
18 would have to ask someone at the
19 company.
20 BY MR. PLACITELLA:
21 Q. Okay. So the answer is what,
22 yes or no?
23 MS. BROWN: The answer
24 is what he gave. Asked and

<p style="text-align: right;">Page 764</p> <p>1 answered.</p> <p>2 THE WITNESS: No, that's</p> <p>3 my answer, you would have to ask</p> <p>4 someone at the company.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. Okay. So your answer is I</p> <p>7 don't know?</p> <p>8 MS. BROWN: Objection.</p> <p>9 THE WITNESS: No, my</p> <p>10 answer is what it was.</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. Okay. Who should I ask at the</p> <p>13 company?</p> <p>14 A. You can ask people in the</p> <p>15 regulatory area.</p> <p>16 Q. Give me a name.</p> <p>17 A. I don't know who is there now.</p> <p>18 Q. Okay. How about the National</p> <p>19 Toxicology Project, when you were involved</p> <p>20 with the National Toxicology Project, did</p> <p>21 you disclose to the National Toxicology</p> <p>22 Project that you knew that Dr. Blount found</p> <p>23 asbestos in Johnson's Baby Powder?</p> <p>24 MS. BROWN: That assumes</p>	<p style="text-align: right;">Page 766</p> <p>1 Q. So what's the answer, did you</p> <p>2 ever make a recommendation?</p> <p>3 A. No, I think that was part of my</p> <p>4 answer.</p> <p>5 Q. So the answer is no, you never</p> <p>6 made a recommendation?</p> <p>7 A. I don't recommend to them what</p> <p>8 they should do to communicate with other</p> <p>9 entities. That's up to them.</p> <p>10 Q. All right. So just to be</p> <p>11 clear, you never made a recommendation that</p> <p>12 Johnson & Johnson disclose to the National</p> <p>13 Toxicology Program that they knew that</p> <p>14 Alice Blount found asbestos in Johnson's</p> <p>15 Baby Powder?</p> <p>16 A. I didn't --</p> <p>17 MS. BROWN: I object.</p> <p>18 To the extent that this is calling</p> <p>19 for privileged information. First</p> <p>20 of all, it has been asked and</p> <p>21 answered. And to the extent that</p> <p>22 Mr. O'Shaughnessy did anything in</p> <p>23 connection with the Coker case</p> <p>24 regarding that information, I would</p>
<p style="text-align: right;">Page 765</p> <p>1 facts and misstates the evidence.</p> <p>2 THE WITNESS: Again,</p> <p>3 like with the FDA, I don't</p> <p>4 communicate with agencies or other</p> <p>5 entities, the company does. And</p> <p>6 I'm not privy to all the back and</p> <p>7 forth with those entities by the</p> <p>8 company, so I don't know.</p> <p>9 BY MR. PLACITELLA:</p> <p>10 Q. Okay. You were on a committee</p> <p>11 that dealt with the National Toxicology</p> <p>12 Project, correct?</p> <p>13 A. I was on a committee that was</p> <p>14 formulating a response and materials for</p> <p>15 the consideration of that as their lawyer,</p> <p>16 yes.</p> <p>17 Q. Okay. And did you recommend</p> <p>18 any time on that committee that the fact</p> <p>19 that Alice Blount found asbestos in</p> <p>20 Johnson's Baby Powder should be indicated</p> <p>21 to the National Toxicology Project?</p> <p>22 A. I don't recall recommending nor</p> <p>23 would that be my role of what they should</p> <p>24 communicate to an agency or an entity.</p>	<p style="text-align: right;">Page 767</p> <p>1 instruct you, Mr. O'Shaughnessy,</p> <p>2 not to answer that.</p> <p>3 MR. PLACITELLA: Okay.</p> <p>4 Can I have a ruling, Your Honor?</p> <p>5 JUDGE SCHNEIDER:</p> <p>6 Objection overruled. This does not</p> <p>7 call for privileged information.</p> <p>8 It's in the course of a</p> <p>9 non-litigation context and it's the</p> <p>10 work of a committee, which is not</p> <p>11 to prepare for litigation.</p> <p>12 THE WITNESS: I didn't</p> <p>13 recommend to the committee what</p> <p>14 they should do or not do with</p> <p>15 respect to scientific information</p> <p>16 that was available to them.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. My question, sir, is did you</p> <p>19 ever recommend to the committee that they</p> <p>20 disclose to the National Toxicology Program</p> <p>21 that Alice Blount found asbestos in the</p> <p>22 Johnson's Baby Powder?</p> <p>23 MS. BROWN: Asked and</p> <p>24 answered.</p>

<p style="text-align: right;">Page 768</p> <p>1 THE WITNESS: I would</p> <p>2 not have recommended that, because</p> <p>3 I didn't recommend anything with</p> <p>4 respect to what they should do with</p> <p>5 scientific information.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. So the answer is no, you never</p> <p>8 did?</p> <p>9 A. I just said I wouldn't have</p> <p>10 recommended that since I don't recommend</p> <p>11 what they should do with scientific</p> <p>12 information.</p> <p>13 Q. Sir, can an honest and</p> <p>14 forthright witness provide a simple answer</p> <p>15 to a simple question?</p> <p>16 MS. BROWN: That's</p> <p>17 argumentative. He's asked and</p> <p>18 answered your questions.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. So let me ask the question</p> <p>21 again.</p> <p>22 A. Wait, you're referring to me --</p> <p>23 Q. Excuse me, excuse me.</p> <p>24 A. No, no, no, you asked a</p>	<p style="text-align: right;">Page 770</p> <p>1 what information that we specifically gave</p> <p>2 in specific cases.</p> <p>3 Q. So let me ask you this final</p> <p>4 couple of questions. And I know that you</p> <p>5 are getting a little impatient with me and</p> <p>6 I apologize if in any way you think I was</p> <p>7 impugning your integrity, I wasn't.</p> <p>8 A. Okay. Thank you. I appreciate</p> <p>9 that. I did interpret that question that</p> <p>10 way and I have the greatest respect for</p> <p>11 you. I only met you here during this</p> <p>12 depositions, but I certainly know you by</p> <p>13 reputation and it's a very good reputation</p> <p>14 among my colleagues at the bar.</p> <p>15 Q. Okay. So if in any way I</p> <p>16 offended you, I apologize on the record in</p> <p>17 front of however many people are watching.</p> <p>18 A. If I misinterpreted it, then</p> <p>19 likewise.</p> <p>20 Q. Okay. Because I don't want you</p> <p>21 to answer questions when Ms. Brown asks you</p> <p>22 questions that I was unfair to you, because</p> <p>23 I don't want to be unfair to you. Okay?</p> <p>24 A. I hear you.</p>
<p style="text-align: right;">Page 769</p> <p>1 question, I want to answer it --</p> <p>2 Q. Go ahead.</p> <p>3 A. -- because you're impugning my</p> <p>4 credibility and I am providing honest and</p> <p>5 forthright answers. So that's the answer</p> <p>6 to your question.</p> <p>7 Q. So the answer is --</p> <p>8 JUDGE SCHNEIDER: If you</p> <p>9 ask me, the witness has been asked</p> <p>10 the question, he has given, I</p> <p>11 think, a responsive answer.</p> <p>12 MR. PLACITELLA: Fine.</p> <p>13 JUDGE SCHNEIDER: And if</p> <p>14 I was the judge, I would say time</p> <p>15 to move on.</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. Okay. Am I correct that you</p> <p>18 never disclosed the fact that Johnson &</p> <p>19 Johnson found -- I mean, Alice Blount found</p> <p>20 asbestos in the Johnson & Johnson's Baby</p> <p>21 Powder to any litigant in cases that you</p> <p>22 were involved in?</p> <p>23 A. I think you asked this before</p> <p>24 and I think my answer was I don't recall</p>	<p style="text-align: right;">Page 771</p> <p>1 Q. Okay. And having now sat</p> <p>2 through four days of depositions, including</p> <p>3 my sometimes impatient questions, and by</p> <p>4 the way, you said about my hands flying,</p> <p>5 I'm Italian, that's what happens. Okay.</p> <p>6 So I apologize. Hands go up and down when</p> <p>7 I ask questions.</p> <p>8 A. It wasn't the hands so much.</p> <p>9 I've had people throw their hands at me,</p> <p>10 it's the way you were laughing.</p> <p>11 Q. Italians talk with their hands.</p> <p>12 There's nothing we can do about that.</p> <p>13 Okay. So you've sat here patiently for</p> <p>14 four days, which I greatly appreciate,</p> <p>15 because I know you're retired and this is</p> <p>16 the last thing you want to do. Will you</p> <p>17 agree with that?</p> <p>18 A. Look, I don't mind fulfilling</p> <p>19 obligations or talking on behalf of what I</p> <p>20 did. I understand there's a lot of issues</p> <p>21 with respect to taking the deposition of</p> <p>22 attorneys and I may not agree with it, but</p> <p>23 I understand that if I'm going to be asked</p> <p>24 questions about what I did, I have no</p>

<p style="text-align: right;">Page 772</p> <p>1 problem answering those questions.</p> <p>2 Q. Okay. So here's my final two</p> <p>3 questions. Having sat through four days</p> <p>4 and going home and thinking about this at</p> <p>5 night, probably more than you would like</p> <p>6 to, do you feel that Johnson & Johnson made</p> <p>7 any mistakes in communicating to courts and</p> <p>8 litigants and the public the fact that</p> <p>9 there's no evidence whatsoever that</p> <p>10 Johnson's Baby Powder ever contained</p> <p>11 asbestos or tremolite?</p> <p>12 A. No, and here's why. During all</p> <p>13 my time at J&J, in responding to these</p> <p>14 document requests and discovery and</p> <p>15 creating affidavits, we didn't do it -- I</p> <p>16 didn't do it and our outside counsel didn't</p> <p>17 do it willy-nilly. We spent an awful lot</p> <p>18 of time with these people and with the</p> <p>19 documents, understanding the Johnson &</p> <p>20 Johnson story with respect to talc and</p> <p>21 understanding it well, speaking to other</p> <p>22 experts, looking at the scientific</p> <p>23 literature, and based on the totality of</p> <p>24 that, I am completely comfortable with the</p>	<p style="text-align: right;">Page 774</p> <p>1 contemplation and with a lot of</p> <p>2 thought and with a lot of work and</p> <p>3 they were purposeful, yes.</p> <p>4 MR. PLACITELLA: I think</p> <p>5 that's all the questions I have.</p> <p>6 If you want to give me -- or you</p> <p>7 know what, I'll turn the witness</p> <p>8 over and if I have something I</p> <p>9 forgot, I'll ask you on my chance</p> <p>10 on redirect. How is that?</p> <p>11 THE WITNESS: Thank you.</p> <p>12 MR. PLACITELLA: Is that</p> <p>13 okay?</p> <p>14 MS. BROWN: Yeah.</p> <p>15 THE WITNESS: That's</p> <p>16 okay.</p> <p>17 MR. TISI: There were</p> <p>18 just a handful of questions I would</p> <p>19 ask. I got an email from a</p> <p>20 colleague to ask a couple of</p> <p>21 questions. I think it would be</p> <p>22 like five minutes, but if you</p> <p>23 prefer, I pass them over to --</p> <p>24 MS. BROWN: On behalf of</p>
<p style="text-align: right;">Page 773</p> <p>1 affidavits when I worked on them then and</p> <p>2 even now.</p> <p>3 Q. Okay. Even though there were</p> <p>4 documents in your files that contradicted</p> <p>5 the affidavits?</p> <p>6 MS. BROWN: Objection.</p> <p>7 Misstates the evidence.</p> <p>8 THE WITNESS: You say</p> <p>9 there are documents that contradict</p> <p>10 it, I don't believe so.</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. Okay. But you never read all</p> <p>13 the documents?</p> <p>14 A. Of course, I never read every</p> <p>15 document, but I did speak to the witnesses</p> <p>16 along with outside counsel and I'm</p> <p>17 fairly -- very comfortable with what I</p> <p>18 learned.</p> <p>19 Q. So if no mistakes were made,</p> <p>20 then you'll agree with me that everything</p> <p>21 that was done was done on purpose?</p> <p>22 MS. BROWN: I object.</p> <p>23 THE WITNESS: Our</p> <p>24 answers were done with a lot of</p>	<p style="text-align: right;">Page 775</p> <p>1 who?</p> <p>2 MR. TISI: Just from one</p> <p>3 of my colleagues.</p> <p>4 MS. BROWN: I know, but</p> <p>5 on behalf of the Forrest</p> <p>6 Plaintiffs?</p> <p>7 MR. TISI: Yeah, on</p> <p>8 behalf of the Forrest Plaintiffs.</p> <p>9 MS. BROWN: You</p> <p>10 concluded that questioning</p> <p>11 yesterday.</p> <p>12 MR. TISI: I understand.</p> <p>13 I am happy to talk to Chris and</p> <p>14 I'll ask Chris to just reserve and</p> <p>15 I will --</p> <p>16 MR. PLACITELLA: Do you</p> <p>17 really want -- I'll do it, but --</p> <p>18 MS. BROWN: I mean,</p> <p>19 look, if you have --</p> <p>20 MR. PLACITELLA: Do you</p> <p>21 want me to ask the questions?</p> <p>22 MS. BROWN: If you have</p> <p>23 five minutes of questioning, I</p> <p>24 think that that is fine.</p>

<p style="text-align: right;">Page 776</p> <p>1 MR. TISI: They're going 2 to be quick, I don't even need, 3 candidly, I think I can anticipate 4 some of the answers and I will not 5 even put a microphone on. 6 MS. BROWN: I mean, note 7 our eminent reasonableness in 8 allowing the callback questions. 9 THE VIDEOGRAPHER: Off 10 the record, 4:21 p.m. 11 - - - - - 12 (Discussion was held off the record.) 13 - - - - - 14 THE VIDEOGRAPHER: Back 15 on the record, 4:22. 16 BY MR. TISI: 17 Q. I apologize and I appreciate 18 your patience on this. 19 A. Sure. 20 Q. This is just a couple of 21 questions and I have, like, a half page 22 here. What is Johnson & Johnson's, if you 23 know, principal place of business? 24 A. I believe the principal place</p>	<p style="text-align: right;">Page 778</p> <p>1 BY MR. TISA: 2 Q. Okay. Do you know, and 3 honestly I'm just reading it, do you have 4 any information about Johnson & Johnson's, 5 what total assets they had? 6 A. No. 7 Q. Any information about total 8 assets that JJCI had? 9 A. I don't know any of that 10 information. 11 Q. Same thing, same questions 12 about liabilities. Do you know any 13 projected liabilities for Johnson & 14 Johnson or JJCI? 15 A. No. It sounds like you're 16 asking for accounting-type information. I 17 don't have that. 18 Q. Was there ever, to your 19 knowledge, any estimation to J&J or JJCI, 20 any analysis or asbestos-related 21 liabilities in connection with these 22 litigations? 23 MS. BROWN: I object and 24 instruct not to answer. It sounds</p>
<p style="text-align: right;">Page 777</p> <p>1 of business is New Brunswick, New Jersey. 2 I forget where the place of incorporation 3 is and from a legal standpoint, I think the 4 two are different, but they may not be. 5 I'm not an expert on corporate law. 6 Q. Okay. And JJCI, where is their 7 principal place of business, if you know? 8 A. I don't know where they're 9 incorporated, but they were located in 10 Skillman, New Jersey. 11 Q. Okay. Do you have any 12 information about, at the time you left, 13 any assets that they had, that J&J had and 14 JJCI? 15 MS. BROWN: What? Hold 16 on. 17 THE WITNESS: I'm not 18 sure -- 19 MS. BROWN: Hold on. 20 THE WITNESS: I don't 21 understand your question. 22 MS. BROWN: I don't 23 either and it's overly broad. 24</p>	<p style="text-align: right;">Page 779</p> <p>1 like advice in the legal context. 2 MR. TISI: Okay. I 3 think that's all. Thank you. 4 MR. PLACITELLA: Do you 5 want to switch seats? 6 MS. BROWN: I do. 7 THE VIDEOGRAPHER: Off 8 the record, 4:24. 9 - - - - - 10 (A recess was taken at this time.) 11 - - - - - 12 THE VIDEOGRAPHER: We 13 are back on the record at 4:34 p.m. 14 BY MS. BROWN: 15 Q. Good afternoon, 16 Mr. O'Shaughnessy. 17 A. Good afternoon. 18 Q. Mr. O'Shaughnessy, I'm glad to 19 finally have the chance to talk to you. We 20 are here on day four of your deposition; is 21 that right? 22 MR. TISI: Objection. 23 THE WITNESS: Right. 24 MR. PLACITELLA: Okay.</p>

<p style="text-align: right;">Page 780</p> <p>1 Well, not exactly right.</p> <p>2 MR. TISI: Not exactly,</p> <p>3 but go ahead.</p> <p>4 BY MS. BROWN:</p> <p>5 Q. And Mr. O'Shaughnessy, would</p> <p>6 you take a minute to introduce yourself to</p> <p>7 our jurors, please?</p> <p>8 A. Yes. My name is John</p> <p>9 O'Shaughnessy and I'm here, as you know,</p> <p>10 testifying on behalf of what I did as an</p> <p>11 attorney with Johnson & Johnson. My</p> <p>12 background is I'm from New York City. I</p> <p>13 grew up in the Bronx. I was one of seven</p> <p>14 children. I attended schools in the Bronx</p> <p>15 until I went to college. I lived at home</p> <p>16 when I went to college in a small college</p> <p>17 called Iona College in New Rochelle, New</p> <p>18 York, just over the border from the Bronx.</p> <p>19 I graduated there in -- with a degree in</p> <p>20 history in 1974. And I then I drove a</p> <p>21 truck for a year. I actually drove a truck</p> <p>22 while I was in school as well, but I drove</p> <p>23 a truck for a year while I wasn't going to</p> <p>24 school, before I entered law school at New</p>	<p style="text-align: right;">Page 782</p> <p>1 probably be in school another two years.</p> <p>2 And I decided, you know, that wasn't for</p> <p>3 me, I wanted to graduate from college in</p> <p>4 two years. So I stayed with college and by</p> <p>5 the time I got out of college, I became</p> <p>6 interested in becoming a lawyer.</p> <p>7 Q. And so you attended law school</p> <p>8 from '75 to '78 ; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And you were just about to tell</p> <p>11 us about some time that you spent at the</p> <p>12 DA's office; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And can you tell us a little</p> <p>15 bit about what -- did you work there as a</p> <p>16 lawyer?</p> <p>17 A. Yeah, I was employed there for</p> <p>18 four years and I was an assistant district</p> <p>19 attorney and so there's a progression in</p> <p>20 the office where, you know, you begin with</p> <p>21 lower seriousness-type crimes like</p> <p>22 misdemeanors and then you graduate, you get</p> <p>23 more responsibility up to, you know,</p> <p>24 serious crimes. And when I was there in</p>
<p style="text-align: right;">Page 781</p> <p>1 York Law School, which is in Lower</p> <p>2 Manhattan. And I entered law school in</p> <p>3 1975 and graduated in 1978. And upon</p> <p>4 graduation, I was employed by the Bronx</p> <p>5 District Attorney's office.</p> <p>6 Q. And let me stop you right there</p> <p>7 for one second, Mr. O'Shaughnessy. So you</p> <p>8 said that you attended New York Law School;</p> <p>9 is that right?</p> <p>10 A. I did, yes.</p> <p>11 Q. And tell our jurors, did you</p> <p>12 always want to be a lawyer?</p> <p>13 A. No, I had kind of visions of</p> <p>14 actually being an oceanographer. In fact,</p> <p>15 I applied for the program and was accepted,</p> <p>16 believe it or not, and the program was at</p> <p>17 the City University of New York in Upper</p> <p>18 Manhattan. They were one of only at the</p> <p>19 time four or five programs that offered</p> <p>20 that. I was in my sophomore year of</p> <p>21 college with two years under my belt, but I</p> <p>22 hadn't taken any science courses. So in</p> <p>23 order to go for that degree, it was</p> <p>24 explained to me that I would have to</p>	<p style="text-align: right;">Page 783</p> <p>1 the criminal court bureau, they called it</p> <p>2 at one point, I was supervising five or six</p> <p>3 other attorneys. And then I moved on to</p> <p>4 the homicide bureau and I ended there as a</p> <p>5 member of the major offense bureau.</p> <p>6 Q. Did you ever have to give</p> <p>7 testimony in connection with that job like</p> <p>8 you're giving here today?</p> <p>9 A. Yes. They had, from time to</p> <p>10 time, I would be assigned to what we called</p> <p>11 homicide duty, which meant that you were on</p> <p>12 call 24 hours so if there were a homicide</p> <p>13 committed and they had a body at the scene,</p> <p>14 I would be called up along with the DA's</p> <p>15 office video team to go and videotape the</p> <p>16 crime scene.</p> <p>17 Also, if there was an arrest</p> <p>18 made in a homicide and the person decided</p> <p>19 to make a statement, I would go with the</p> <p>20 video team and we would videotape the</p> <p>21 statement for use later in court. And then</p> <p>22 when it was introduced in court, I would</p> <p>23 give testimony about the circumstances</p> <p>24 surrounding the taking of the statement</p>

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1 during the trial of the homicide.
 2 Q. And how long did you stay
 3 there?
 4 A. I was there -- I was in the
 5 office for four years and I left in 1982
 6 and I went to a civil litigation firm. The
 7 DA's office is, of course, is criminal, now
 8 I went to civil litigation and that was a
 9 firm in New York City called Martin
 10 Clearwater & Bell where their clients were
 11 primarily hospitals and doctors sued in
 12 medical malpractice personal injury cases.
 13 Q. And how long did you stay
 14 there?
 15 A. I was there, I think,
 16 approximately three years and then I went
 17 to the first time to a corporation. And
 18 the name of the corporation was
 19 International Playtex and they were located
 20 in Stamford, Connecticut. And I was hired
 21 as a litigation attorney and I primarily
 22 handled their lawsuits involving some of
 23 their consumer products.
 24 Q. And did there come a point in

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1 time where you came to Johnson & Johnson?
 2 A. Yeah, while I was at Playtex, I
 3 was working with attorneys who also worked
 4 with Johnson & Johnson and they informed me
 5 that they were looking for someone. And I
 6 threw my hat in the ring and eventually was
 7 hired by Johnson & Johnson in June of --
 8 and started in June of 1987.
 9 Q. And did you have to move to New
 10 Jersey for that job?
 11 A. No, by the time I took the job
 12 at Johnson & Johnson, I had moved from the
 13 Bronx to Queens, New York, which is right
 14 over a bridge, and I was commuting to
 15 Connecticut where the Playtex Corporation
 16 was. But when I took the job at Johnson &
 17 Johnson, I realized I had to move to New
 18 Jersey. It was too far to commute. I
 19 commuted for about six or seven months, but
 20 it was about two and a half hours each way
 21 by car through the heart of, you know, the
 22 greater New York City metropolitan area
 23 traffic.
 24 Q. So lots of traffic, yeah.

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1 A. Yeah.
 2 Q. Did you have family during that
 3 time, Mr. O'Shaughnessy?
 4 A. Yeah, my wife and I had our
 5 first child while we were living in Queens
 6 and a second child as well and the third
 7 child was born in New Jersey.
 8 Q. And how old are your kids
 9 today?
 10 A. All right.
 11 Q. Not to make you feel old.
 12 A. I can't say I don't recall to
 13 these questions, I'll get in trouble.
 14 MR. TISI: Exactly.
 15 MR. PLACITELLA: Just
 16 don't screw up the birthdays or the
 17 anniversary. Don't ask him the
 18 anniversary question.
 19 THE WITNESS: My
 20 daughter is approaching 36 or 37.
 21 I have a son who is working back
 22 from that, who is about four years
 23 younger than her, so he's about 31
 24 or so. And I'm sorry, he's about,

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1 approaching 35. And then I have a
 2 son who I know is 31.
 3 BY MS. BROWN:
 4 Q. And are you a grandfather?
 5 A. I am. I have two
 6 grandchildren -- three grandchildren and
 7 one, my daughter-in-law is due to have a
 8 baby this fall. So that would be four.
 9 Q. And we'll talk in a second a
 10 little bit about what you're doing now, but
 11 fair to say you're retired now?
 12 A. Yeah, I retired in May 1st of
 13 2018.
 14 Q. And can you tell us generally
 15 how you've spent your retirement?
 16 A. Yeah, you know, it's something
 17 that I don't -- people talk about getting
 18 used to retirement, I don't think -- I
 19 think it's kind of a continuum. So I don't
 20 know if I'm used to it already, but I spend
 21 most of time doing family-type stuff and,
 22 you know, my kids were moving, both of them
 23 were moving when I first retired and I
 24 moved, so that was three moves that I was

<p style="text-align: right;">Page 788</p> <p>1 involved with helping the kids out and 2 myself. So that kept you pretty busy. And 3 after that, it's more, you know, keeping in 4 touch with friends and family and my 5 immediate family. And you know that, of 6 course, like a lot of other people, that 7 was interrupted by COVID, so right now, 8 we're just kind of beginning to begin that 9 process, again, of having our family, you 10 know, get together. 11 Q. And have you gotten to spend 12 time with your grandkids in your 13 retirement? 14 A. Yeah, but not as much. They're 15 very young. The oldest is four, so COVID 16 took, you know, a good chunk of that out 17 about a year, you know. 18 Q. I want to talk a little bit, 19 Mr. O'Shaughnessy, about your time at 20 Johnson & Johnson. Can you tell us a 21 little bit about what your position was 22 when you started and what your 23 responsibilities were? 24 A. Yeah, I started with Johnson &</p>	<p style="text-align: right;">Page 790</p> <p>1 well. 2 Q. And how long did you stay in 3 that position at Johnson & Johnson? 4 A. Well, I stayed in that position 5 until I left. My title changed after five 6 years to assistant general counsel, but 7 that didn't impact my responsibilities. 8 Q. Okay. And we have been here 9 over the last couple of days, 10 Mr. O'Shaughnessy, talking with you about 11 your work on talc. 12 A. Yes. 13 Q. Can you help us understand in 14 terms of all of your responsibilities at 15 the company how much time you spent on 16 issues relating to baby powder and talcum 17 powder? 18 A. Yeah, in the context of the 19 other litigation, I estimate the time I 20 spent on talc was about 8 percent or less. 21 Q. And during the time period that 22 you were at Johnson & Johnson, did you have 23 the opportunity to work with a number of 24 lawyers outside of the company?</p>
<p style="text-align: right;">Page 789</p> <p>1 Johnson, as I told Mr. -- one of the 2 attorneys, as a senior attorney when I was 3 hired. And I was hired and I primarily 4 handled litigation at that time for the 5 Ortho Pharmaceutical Corporation. I should 6 explain, Johnson & Johnson, as we testified 7 about, is a large company. And it's broken 8 up into basically three different 9 businesses, pharmaceuticals, medical 10 devices, and consumer, which we observe 11 talking about mostly during my deposition. 12 But I did an awful lot of work with the 13 pharmaceutical side. Same type of work 14 that I did with talc, defending product 15 liability lawsuits in courts around the 16 country, working with outside counsel. The 17 same for medical device-type cases and by 18 medical devices, I mean implants, 19 orthopaedic implants. And we also had a -- 20 I don't know if Johnson & Johnson still 21 owns the company, but we had a company that 22 made neurosurgical instruments. So there 23 were an awful lot of lawsuits between the 24 pharmaceuticals, the medical devices as</p>	<p style="text-align: right;">Page 791</p> <p>1 A. Right. In the position of an 2 in-house attorney, of course, you can't 3 handle cases on your own as a law firm -- 4 as a law firm would do, you know, in 5 wherever the law firm is located. So 6 Johnson & Johnson is sued basically 7 everywhere throughout the United States. 8 And we have to hire counsel to handle those 9 cases. And some cases, as we know, from 10 talc, they are repeated and they're more 11 than one. And they become a lot of cases, 12 what you generally do is you try and work 13 with a few firms that develop a specialty, 14 that understand the product, understand the 15 people who, you know, produce the product 16 at the company and, you know, like I said 17 before, responsible for collecting 18 documents and that sort of thing so we can 19 respond to these discovery requests that I 20 have been asked about and that sort of 21 thing. So it's very, you know, you have 22 to -- my role in-house was to kind of 23 manage all of that. So it's a balance of 24 being involved in the day-to-day operations</p>

<p style="text-align: right;">Page 792</p> <p>1 so that you understand what's going on, but 2 you have to let go some of that to manage 3 around the country. So you really get to 4 rely on your outside counsel to do a lot of 5 that with you, your coordinating counsel. 6 Q. What about expert witnesses, 7 Mr. O'Shaughnessy, over the course of your 8 work at Johnson & Johnson, did you have the 9 opportunity to meet and work with any 10 expert witnesses? 11 A. Yes, like I said, most of my 12 work was on the pharmaceutical and device 13 side and in those cases, you know, we would 14 be working with outside experts retained to 15 provide their opinions on the case, to 16 review what the company has done, and I 17 worked with our outside counsel and I met 18 with those experts, not all of them and not 19 as much as our outside counsel, but I would 20 get to know who we were using. And that 21 kind of, that kind of involvement would 22 become more if the case were proceeding to 23 trial. Because then, you know, all the 24 evidence is being marshaled and there's</p>	<p style="text-align: right;">Page 794</p> <p>1 product in different departments. I mean, 2 we spoke about regulatory, R&D, medical, so 3 there's not just one or two people in those 4 departments, there's many. So you try and 5 understand that product within that company 6 and how that company, you know, handled 7 that product. 8 And with respect to my role 9 as an attorney in litigation, litigation 10 touches on all of the areas that the 11 company would have with the product. So 12 the company has lots of contact, as we've 13 seen, with outside agencies and outside 14 entities and although I wouldn't be 15 responsible for the back and forth and what 16 was substantively done, but I had to know 17 what was going on, because those issues 18 would come up in court. So although we had 19 lawyers from Johnson & Johnson, for 20 instance, assigned to regulatory, 21 corporate, trademark, other areas of 22 litigation, I had to make sure that I was 23 aware of anything that could potentially 24 impact the litigation.</p>
<p style="text-align: right;">Page 793</p> <p>1 going to be a trial, so you have to arrange 2 for witnesses and that sort of thing. So 3 the work intensified as the cases 4 approached trial. 5 Q. And what about the scientists 6 and experts inside of Johnson & Johnson, 7 did you have an opportunity over the course 8 of your work as a lawyer to meet with and 9 work with some of those folks? 10 A. Yeah, I would say that's one of 11 the main functions of, I thought of my job, 12 was to make sure that the information that 13 the company had would get, as far as 14 possible, seamlessly translated to our 15 legal teams so they would be able to defend 16 the cases in court. And so that would mean 17 going with our outside counsel, meeting 18 with the people who, you know, had 19 information about the product, who worked 20 on the product. And in a company like 21 Johnson & Johnson, it's not that easy, 22 because the company is large. These 23 companies in their own right are large. 24 And so there's many employees working on a</p>	<p style="text-align: right;">Page 795</p> <p>1 Q. Do you have any medical or 2 scientific background, Mr. O'Shaughnessy? 3 A. I do not. 4 Q. You were asked a lot of 5 questions over the course of these last few 6 days about epidemiology, for example. Do 7 you recall some of those questions? 8 A. Yes. 9 Q. In your role as a lawyer for 10 Johnson & Johnson, was it your job to 11 review and evaluate epidemiology regarding 12 the products you were responsible for? 13 A. No, that would be the company 14 scientists, technical people. 15 Q. Do you feel qualified as a 16 lawyer to evaluate those kind of scientific 17 issues? 18 A. No -- 19 MR. TISI: Objection. 20 Mischaracterizes my question. Go 21 ahead. 22 THE WITNESS: No, 23 clearly not. 24</p>

<p style="text-align: right;">Page 796</p> <p>1 BY MS. BROWN:</p> <p>2 Q. What about do you have any</p> <p>3 training or expertise in testing talc for</p> <p>4 asbestos?</p> <p>5 A. No.</p> <p>6 Q. Are you a geologist?</p> <p>7 A. No, no.</p> <p>8 Q. Are you a microscopist?</p> <p>9 A. No.</p> <p>10 Q. Somebody who looks under a</p> <p>11 microscope at talc to see if there was</p> <p>12 asbestos?</p> <p>13 A. No, I have no expertise in</p> <p>14 those areas.</p> <p>15 Q. Are you qualified to look</p> <p>16 through -- counsel had stacks of what he</p> <p>17 represented were test results for Johnson's</p> <p>18 Baby Powder. Do you recall those stacks</p> <p>19 and those questions?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Are you qualified as a lawyer</p> <p>22 to review those stacks of testing results</p> <p>23 and analyze their meaning?</p> <p>24 A. No. As a lawyer, we would be</p>	<p style="text-align: right;">Page 798</p> <p>1 have been asked over the past couple of</p> <p>2 days; is that right?</p> <p>3 A. Yes.</p> <p>4 MR. TISI: Objection,</p> <p>5 leading.</p> <p>6 THE WITNESS: Yes, I did</p> <p>7 give that answer on multiple</p> <p>8 occasions during the deposition,</p> <p>9 more than I would have liked.</p> <p>10 BY MS. BROWN:</p> <p>11 Q. Why do you think it is that you</p> <p>12 had to answer in that way so many times?</p> <p>13 A. Well, because most of these</p> <p>14 events that I was questioned about occurred</p> <p>15 in the area of 30 to 20 years ago. And I</p> <p>16 don't have any recollection of them. In</p> <p>17 fact, you know, counsel would ask me a</p> <p>18 question, did you ever do this and I would</p> <p>19 say I don't recall doing it. And then they</p> <p>20 would have a document showing that, well, I</p> <p>21 did have correspondence here or I did speak</p> <p>22 to that person. But even after seeing that</p> <p>23 correspondence, it didn't click with any</p> <p>24 recollection I had.</p>
<p style="text-align: right;">Page 797</p> <p>1 dealing with those insofar as the company</p> <p>2 had to explain them or if they came up in</p> <p>3 the litigation. But we would always rely,</p> <p>4 I would always rely on the company's</p> <p>5 scientists to explain them. Because I</p> <p>6 think I explained at one point, you know, I</p> <p>7 have been around these companies for a long</p> <p>8 time and I learned that the testing is</p> <p>9 sophisticated and it's different and there</p> <p>10 are different types of testing. And there</p> <p>11 are people who are trained to do it who do</p> <p>12 it at our company who know it way better</p> <p>13 than I and interpret it, so I would rely on</p> <p>14 them.</p> <p>15 Q. Mr. O'Shaughnessy, you were</p> <p>16 asked a lot of questions to which you</p> <p>17 responded in some way, shape, or form that</p> <p>18 you couldn't really recall.</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what I'm talking</p> <p>21 about?</p> <p>22 A. Sure.</p> <p>23 Q. And I imagine that probably</p> <p>24 happened to a fair amount of questions you</p>	<p style="text-align: right;">Page 799</p> <p>1 And, you know, at this time,</p> <p>2 I'm dealing with talc, but I'm also dealing</p> <p>3 with the same kind of issues, discovery,</p> <p>4 documents, company witnesses, outside</p> <p>5 counsel in other litigation for, you know,</p> <p>6 the pharmaceutical side and the medical</p> <p>7 device side. So it's very hard to remember</p> <p>8 and especially when, you know, there were</p> <p>9 hundreds and thousands of cases.</p> <p>10 Q. Did you do your best,</p> <p>11 nevertheless, while you were here over the</p> <p>12 last couple of days to try and recall what</p> <p>13 you could?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Did you try and do your best to</p> <p>16 answer everybody's questions truthfully and</p> <p>17 accurately?</p> <p>18 A. Yes, I tried to the best of my</p> <p>19 ability to do that.</p> <p>20 Q. Would it be fair for someone to</p> <p>21 argue that because you said I don't recall</p> <p>22 a lot, you were trying to hide information?</p> <p>23 MR. TISI: Objection.</p> <p>24 MR. PLACITELLA: I'll</p>

<p style="text-align: right;">Page 800</p> <p>1 defer to Tisi's objection. 2 MR. TISI: It's okay. 3 We can both object. 4 MR. PLACITELLA: 5 Objection. 6 THE WITNESS: No, I 7 would never try to hide anything 8 and I know it has been -- it seems 9 to me it has been suggested or 10 inferred that I tried to hide 11 information or considered 12 information secret. I know that 13 term was used. And that I would 14 prevent information from going to 15 the court or not divulge to the 16 court or not given to outside 17 agencies or anything like that. I 18 would never do anything to impede 19 information. I would never do 20 anything to violate the oath I took 21 as a lawyer to tell the truth and 22 to be honest in dealing with 23 outside counsel, opposing counsel 24 and the court.</p>	<p style="text-align: right;">Page 802</p> <p>1 was some correspondence, dealings with 2 lawyers and I volunteered to go to New 3 Jersey from Pennsylvania, because there's 4 jurisdictional issues about subpoenas and I 5 didn't want to impede it or cause a 6 problem. So I said look, I'll voluntarily 7 go to New Jersey. I'll meet your process 8 server and I'll accept service. 9 Q. Why did you do that? 10 A. Because I didn't want -- 11 MR. TISI: Objection. 12 MR. PLACITELLA: 13 Objection, scope. It has nothing 14 to do with this case. 15 MR. TISI: And in all 16 honesty, I think that may call for 17 some communications that you had 18 with him. So if you, honestly, if 19 you ask that question, I'm going to 20 ask questions and follow up asking, 21 did you have communications with 22 your lawyers about that. So you're 23 going to open the door about that. 24 MS. BROWN: Well, that's</p>
<p style="text-align: right;">Page 801</p> <p>1 BY MR. PLACITELLA: 2 Q. And let's break that down a 3 little bit if we could, Mr. O'Shaughnessy. 4 You understand the questions that you have 5 been asked over the course of the last 6 couple of days are about really serious 7 issues, right? 8 A. Absolutely. 9 Q. And in fact, the work that you 10 did at Johnson & Johnson, did you take it 11 seriously? 12 A. I did, because I understood the 13 issues were serious then and I understand 14 they're serious now. And I understand 15 they're serious to the litigants and 16 they're serious to the company. 17 Q. And in terms of your appearance 18 here at this deposition, how did you come 19 to learn that your presence here for 20 questioning by the Plaintiffs' lawyers was 21 requested? 22 A. I had a gentleman came to my 23 house, a process server and rang the 24 doorbell and served a subpoena. Then there</p>	<p style="text-align: right;">Page 803</p> <p>1 just not fair. I'm not opening the 2 door about that at all. I'm asking 3 you not about anything that you 4 talked to lawyers about. But why 5 did you make the decision to do 6 what you just described? 7 MR. TISI: Objection, 8 except to the extent if you're 9 asking -- I'm going to ask him, if 10 any of his decision had any -- in 11 reaching that decision, did he 12 speak with the lawyers. 13 MS. BROWN: Okay. I'm 14 going to withdraw the question. 15 MR. TISI: Thank you. 16 MS. BROWN: This is not 17 worth it. 18 BY MS. BROWN: 19 Q. And so, Mr. O'Shaughnessy, over 20 the course of the past couple of days, did 21 you come to kind of understand why the 22 lawyers wanted to talk to you? 23 A. Yeah, I think in part, I did, 24 yeah, I know.</p>

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1 Q. And what was your impression of
2 the questions being asked of you?
3 MR. TISI: Objection.
4 THE WITNESS: Like I
5 said before, these questions were
6 posed to me sometimes with
7 testimony from the employee or for
8 some deposition that I may not even
9 have known about or been employed
10 and then juxtapositioned with a
11 document. And the inference I
12 think always was that the document
13 or the information in the document
14 or information about testing was
15 being hidden. And that's what I
16 think they were trying to do with
17 the documents and that wasn't, in
18 your opinion, what was happening
19 with what I was doing with the
20 product. And I --
21 BY MS. BROWN:
22 Q. I'm sorry. Mr. O'Shaughnessy,
23 as it relates to your actions and based on
24 your experience, is it fair and accurate to

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1 suggest that you were part of an effort to
2 keep information secret?
3 MR. TISI: Objection.
4 THE WITNESS: That's not
5 accurate and no, it's not fair.
6 BY MS. BROWN:
7 Q. Okay. Is it based on your
8 experience and your knowledge, is it fair
9 and accurate to suggest that you tried to
10 give information to courts and to
11 plaintiffs that wasn't truthful?
12 MR. TISI: Objection.
13 MR. PLACITELLA:
14 Objection to form.
15 THE WITNESS: No.
16 MR. PLACITELLA:
17 Mischaracterizes.
18 BY MS. BROWN:
19 Q. You were asked a number of
20 questions, Mr. O'Shaughnessy, about whether
21 or not --
22 A. You have your notes up on the
23 Elmo.
24 Q. Sorry, thanks. This is top

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1 secret.
2 MR. TISI: But nobody
3 could deliver it as well as you
4 did.
5 MR. PLACITELLA: It says
6 pick up milk on the way home.
7 BY MS. BROWN:
8 Q. No, I don't do that. Clearly
9 that wasn't my note. We can get back to
10 business here.
11 Mr. O'Shaughnessy, you were
12 asked a number of questions about whether
13 or not you had, quote, "turned over certain
14 documents in certain cases." Do you
15 remember those questions?
16 A. I do, yeah.
17 Q. First of all, were you ever
18 shown any documents about particular
19 requests in individual cases?
20 MR. TISI: Objection.
21 THE WITNESS: I was
22 shown the document requests in some
23 of the discovery.
24

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1 BY MS. BROWN:
2 Q. Do you have a memory, sitting
3 here today, about what specific documents
4 were requested in what individual cases?
5 MR. TISI: Objection.
6 THE WITNESS: No, I
7 don't. And I think I testified to
8 that and, you know, the discovery
9 requests -- no, I don't, and I
10 think I said that.
11 BY MS. BROWN:
12 Q. And in terms of your role in
13 responding to requests like that, did you
14 take those requests seriously?
15 A. Yes. And, you know, we spent a
16 lot of time, we, when I say "we," I mean
17 myself and our outside counsel spent a lot
18 of time, you know, analyzing those
19 requests, developing the response, in a way
20 I testified during here with all we did
21 with respect to the company witnesses and
22 documents. And, you know, really, in light
23 of the current law, because these requests
24 are made in jurisdictions and certain laws

<p style="text-align: right;">Page 808</p> <p>1 apply to that and there's certain 2 objections that we can and do make and so 3 all of that put together, yeah, and we took 4 it very seriously and we spent a lot of 5 time on it making sure they were accurate. 6 Q. Did you ever take steps to -- 7 strike that. You were asked questions 8 about a document that I want to show you, 9 if we could have the Elmo now that my notes 10 are gone. 11 MR. TISI: Did you give 12 me that document, I'm sorry? 13 MS. BROWN: It's a 14 document Chris used, 456.1. 15 MR. TISI: I'm sorry, 16 could I just take a look at it? 17 Oh, Chris used it. 18 BY MS. BROWN: 19 Q. It's the other Chris. This 20 document was marked as Exhibit 456.1 and it 21 is a document from November 23, 1993, to W. 22 Ashton and D. Jones from R. Denton. Do you 23 see that? 24 A. Yes, I remember that.</p>	<p style="text-align: right;">Page 810</p> <p>1 mine management staff just prior to the J&J 2 divestiture and the Cyprus purchase. 3 However, several former Hammondsville 4 miners are still employed at the Ham mine, 5 and they provided us with useful 6 information as to the nature of the 7 underground works." Do you recall 8 questions regarding that paragraph? 9 A. Yes, I do. 10 Q. Okay. And I want to show you a 11 document that counsel didn't show you. And 12 let's mark this document as Defense 1. 13 Okay. 14 - - - - - 15 (Affidavit of Robert K. Denton 16 marked O'Shaughnessy Exhibit D-1 17 for identification.) 18 - - - - - 19 BY MS. BROWN: 20 Q. Now, the document -- 21 MR. PLACITELLA: Could I 22 just ask a question? 23 MS. BROWN: Yes. 24 MR. PLACITELLA: This</p>
<p style="text-align: right;">Page 809</p> <p>1 Q. Okay. And the subject is "Trip 2 Report Talc Validation Team Meeting." Do 3 you see that? 4 A. Yes. 5 Q. And first of all, did this 6 document go to you? 7 A. No. 8 Q. Have you ever seen this 9 document before? 10 A. No. 11 Q. Okay. Do you know anything 12 about the contents of this document? 13 A. No, I never read it. 14 Q. Okay. You were shown page 3 of 15 this document and you were asked questions 16 about this highlighted section that has a 17 little asterisk and the word "note." Do 18 you see that? 19 A. I do. 20 Q. Okay. And you were asked 21 questions about this sentence "The 22 specifics of the mining operation at 23 Hammondsville are uncertain, as most of the 24 pre-Luzenac records were destroyed by the</p>	<p style="text-align: right;">Page 811</p> <p>1 affidavit dated 11 -- well, 2 October 31, 2018. Was it ever 3 turned over to me in the course of 4 litigation? Because it doesn't 5 have any information that you ever 6 turned it over. 7 MR. BERNARDO: I'll 8 represent, Chris, it's in multiple 9 briefs -- 10 MR. PLACITELLA: That's 11 not the question, whether it's in 12 briefs or not. 13 MR. BERNARDO: That have 14 been served in the MDL and the 15 other places that you're privy to. 16 MR. PLACITELLA: The 17 question is -- 18 MS. BROWN: He just 19 answered that. 20 MR. PLACITELLA: Excuse 21 me. Was this affidavit ever turned 22 over to me in discovery? 23 MS. BROWN: He just 24 answered that.</p>

<p style="text-align: right;">Page 812</p> <p>1 MR. PLACITELLA: No, he 2 didn't. 3 MS. BROWN: Yes, it has 4 been filed with the court. Okay. 5 MR. PLACITELLA: Where, 6 can you tell me where it was filed? 7 MR. BERNARDO: Why don't 8 we continue with this examination 9 instead of an examination -- 10 MR. PLACITELLA: Judge, 11 they're asking the witness about an 12 affidavit of a J&J -- 13 MS. BROWN: Hold on, 14 hold on. It's been used at court. 15 It has been used at trial. 16 MR. PLACITELLA: Not my 17 trial. What trial? 18 MS. BROWN: Let's take a 19 look, if we could, 20 Mr. O'Shaughnessy -- 21 MR. PLACITELLA: Well, I 22 would object to the use of the 23 affidavit or any questions about it 24 when you've had it in your</p>	<p style="text-align: right;">Page 814</p> <p>1 Defense Exhibit No. 1. Do you see that, 2 Mr. O'Shaughnessy? 3 A. I do. 4 Q. And the document that counsel 5 showed you was written by a R. Denton. Do 6 you see that? 7 A. Yes. 8 Q. Okay. And this affidavit, can 9 you tell our jurors who signed and swore to 10 the information in this affidavit? 11 A. Robert K. Denton. 12 Q. Okay. And -- 13 MR. PLACITELLA: Can we 14 ask him if he's ever seen it 15 before? 16 BY MS. BROWN: 17 Q. Did counsel show you this 18 document during his questioning, 19 Mr. O'Shaughnessy? 20 MR. PLACITELLA: No, my 21 question was -- 22 THE WITNESS: No, he 23 didn't. 24 MS. BROWN: Wait,</p>
<p style="text-align: right;">Page 813</p> <p>1 possession, you knew you were going 2 to ask it, and you never turned 3 over. 4 MS. BROWN: Okay. That 5 is demonstrably false. It has been 6 attached to a number of filings and 7 it has been used in court. 8 MR. TISI: But there's 9 no Bates numbers on it. 10 MS. BROWN: I 11 understand. We're going to proceed 12 and you can ask whatever you want. 13 MR. PLACITELLA: So 14 you're representing this affidavit 15 was served upon me as counsel for 16 J&J -- 17 MS. BROWN: I'm 18 representing that this document has 19 been used. 20 MR. BERNARDO: In your 21 role in the multi-district 22 litigation. 23 BY MS. BROWN: 24 Q. This is what we have marked as</p>	<p style="text-align: right;">Page 815</p> <p>1 wait -- 2 MR. PLACITELLA: No, no, 3 no, please. 4 MS. BROWN: -- you are 5 interrupting my questioning -- 6 MR. PLACITELLA: Please 7 ask him if he ever saw it before. 8 MS. BROWN: You are 9 welcome to ask him whatever you 10 want, you are interrupting me and 11 you are suggesting questions out of 12 turn. 13 MR. PLACITELLA: Okay. 14 MS. BROWN: Please stop. 15 Now, Mr. O'Shaughnessy, 16 did counsel show you Defense 17 Exhibit 1, Mr. Denton's affidavit, 18 when he was questioning you? 19 THE WITNESS: No. 20 BY MS. BROWN: 21 Q. Let's look at paragraph number 22 14. And would you read to our jurors the 23 information contained in Mr. Denton's 24 affidavit of 2018?</p>

<p style="text-align: right;">Page 816</p> <p>1 A. Paragraph 14 reads "I 2 understand that some attorneys for 3 plaintiffs in talcum powder litigation 4 involving Johnson & Johnson have suggested 5 that the records I described as having been 6 destroyed would have included records and 7 materials related to testing, testing 8 results, talcum powder samples tested, 9 and/or TEM grids of talc and/or talc ore 10 from the Hammondsville mine. No such 11 records or materials would have been 12 included among the materials that were 13 destroyed." 14 Q. And in terms of the document 15 that counsel showed you as Exhibit 456.1, 16 is that a document you had ever seen 17 before? 18 A. I have not. 19 Q. And in terms of this affidavit 20 with information from Mr. Denton himself, 21 is that something you had ever seen before? 22 A. No. 23 Q. Okay. Do you think it's 24 important, Mr. O'Shaughnessy, when</p>	<p style="text-align: right;">Page 818</p> <p>1 THE WITNESS: Yes. 2 MR. TISI: Yeah, 3 objection to form. 4 BY MS. BROWN: 5 Q. And, Mr. O'Shaughnessy, in your 6 role as lawyer for Johnson & Johnson, did 7 you review and study and become an expert 8 on every single test result test that was 9 performed on Johnson's Baby Powder? 10 A. No. 11 Q. You were shown by counsel 12 Exhibit 230, an affidavit of John Hopkins, 13 do you remember being shown this affidavit? 14 A. Yes, in that Durham case. 15 Q. And first of all, tell our 16 jurors, who is John Hopkins? 17 A. John Hopkins was a toxicologist 18 who was employed by Johnson & Johnson as a 19 scientist. I believe John was originally 20 employed in the UK and then he came over to 21 New Jersey and was a scientist for the 22 company there. 23 Q. And just generally, and I don't 24 want to ask you in any particular case, but</p>
<p style="text-align: right;">Page 817</p> <p>1 considering all documents like this one 2 from 1993 to look at all of the 3 information? 4 MR. TISI: Objection to 5 form. 6 THE WITNESS: Yes, I 7 believe so and I was being asked 8 questions about a document that I 9 hadn't seen and I wasn't aware of 10 information that the document had 11 been addressed already in the 12 litigation and the specific 13 questions that Mr. Placitella had 14 had been addressed. And I couldn't 15 address them, because I had no 16 knowledge about the document. 17 BY MS. BROWN: 18 Q. Did it happen a lot, 19 Mr. O'Shaughnessy, over the past couple of 20 days that you were shown selected test 21 reports or studies or documents? 22 A. Yes. 23 MR. PLACITELLA: 24 Objection to the question.</p>	<p style="text-align: right;">Page 819</p> <p>1 can you tell us generally about your 2 interactions with Dr. Hopkins? 3 A. Yeah. As I think I explained 4 before in the testimony, in order to defend 5 the product in litigation, you speak to the 6 people at the company who are experts in it 7 and who know about it, are familiar with 8 all the issues. And Mr. Hopkins was among 9 the many people at Johnson & Johnson who 10 was familiar with a lot of these issues. 11 And I spoke with him, as did our outside 12 counsel, quite often regarding this 13 litigation. 14 Q. And you were asked questions 15 about paragraph 3, audits of talc mines 16 conducted by Professor Fred Pooley. Do you 17 remember that? 18 A. Right, I do. 19 Q. And you were asked questions 20 about Dr. Hopkins' statement that the 21 conclusion of the audits was that for both 22 the Italian and Vermont mines, there was 23 zero evidence of asbestos in the geology 24 and mineralogy of the mines. Do you recall</p>

<p style="text-align: right;">Page 820</p> <p>1 that?</p> <p>2 A. Right, I do.</p> <p>3 Q. And then you were shown some</p> <p>4 other documents that were put up next to</p> <p>5 this affidavit.</p> <p>6 MR. PLACITELLA:</p> <p>7 Objection. You're using your</p> <p>8 hands.</p> <p>9 BY MS. BROWN:</p> <p>10 Q. Do you recall those questions?</p> <p>11 A. I do.</p> <p>12 Q. And one document though you</p> <p>13 were not shown was one of Dr. Pooley's</p> <p>14 audits and so I would like to mark as</p> <p>15 Defense 2 the document about which Dr.</p> <p>16 Hopkins was referring here.</p> <p>17 MR. PLACITELLA:</p> <p>18 Objection, no basis.</p> <p>19 - - - - -</p> <p>20 (Letter dated 9/28/72 and</p> <p>21 Report Bates JNJTALC000289268 to</p> <p>22 359834 marked O'Shaughnessy Exhibit</p> <p>23 D-2 for identification.)</p> <p>24 - - - - -</p>	<p style="text-align: right;">Page 822</p> <p>1 A. It states "The mineralogical</p> <p>2 X-ray and morphological examination of the</p> <p>3 Italian mine samples has been in progress</p> <p>4 for over a year. The samples were all</p> <p>5 collected under my supervision at the</p> <p>6 Fontana mine, which is the same mine from</p> <p>7 which the Shower to Shower sample was</p> <p>8 obtained."</p> <p>9 Q. Okay. And what information</p> <p>10 does Dr. Pooley provide about his own audit</p> <p>11 that was the subject of Dr. Hopkins'</p> <p>12 affidavit?</p> <p>13 A. Reading from the document again</p> <p>14 it says "The report of the examination</p> <p>15 contains a brief outline of the results</p> <p>16 obtained. No chrysotile was found at the</p> <p>17 mine or in the samples taken. Some</p> <p>18 tremolite was located, but was not</p> <p>19 asbestiform in character and has not been</p> <p>20 detected in 00000 talc imported into Great</p> <p>21 Britain for the past year, nor in shipments</p> <p>22 dating back to 1949. I hope that it is of</p> <p>23 some interest to you. Yours sincerely,</p> <p>24 Fred Pooley."</p>
<p style="text-align: right;">Page 821</p> <p>1 BY MS. BROWN:</p> <p>2 Q. And counsel has an objection to</p> <p>3 no basis. Do you have a memory of seeing</p> <p>4 any of the test results that counsel for</p> <p>5 the Plaintiffs put in front of you today?</p> <p>6 A. No.</p> <p>7 Q. Do you -- was it your role at</p> <p>8 the company to be an expert on the meaning</p> <p>9 or interpretation of those test results?</p> <p>10 A. No, that was for the</p> <p>11 scientists.</p> <p>12 Q. All right. And was Dr. Hopkins</p> <p>13 one of those scientists?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And in terms of this</p> <p>16 letter, it's dated September 28, 1972, by</p> <p>17 Dr. Pooley. And it's a letter to</p> <p>18 Dr. Shelley. Do you have a memory of who</p> <p>19 Dr. Shelley was?</p> <p>20 A. I do not, no.</p> <p>21 Q. Okay. Can you read to our</p> <p>22 jurors the information contained in the</p> <p>23 first paragraph of this letter that we've</p> <p>24 marked as Defense 2?</p>	<p style="text-align: right;">Page 823</p> <p>1 Q. And one of the things that Dr.</p> <p>2 Pooley notes here is that some tremolite</p> <p>3 was located, but was not asbestiform in</p> <p>4 character. Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Are you, Mr. O'Shaughnessy,</p> <p>7 qualified or capable of interpreting test</p> <p>8 results to determine whether or not the</p> <p>9 minerals identified are asbestiform or</p> <p>10 nonasbestiform?</p> <p>11 A. I am not.</p> <p>12 Q. And when reviewing testing</p> <p>13 results at Johnson & Johnson, were there</p> <p>14 people who were qualified to do that?</p> <p>15 A. Yes, of course.</p> <p>16 Q. And was Dr. Hopkins one of</p> <p>17 those people?</p> <p>18 A. Yes.</p> <p>19 Q. And what is, and I don't want</p> <p>20 to ask you about any particular case,</p> <p>21 Mr. O'Shaughnessy, but what was your</p> <p>22 understanding based on speaking to all of</p> <p>23 the experts at the company about the</p> <p>24 processes that were in place to test talc</p>

<p style="text-align: right;">Page 824</p> <p>1 for asbestos?</p> <p>2 MR. TISI: Objection to</p> <p>3 form. Overbroad.</p> <p>4 THE WITNESS: My</p> <p>5 understanding that the testing was</p> <p>6 voluminous. It occurred over many,</p> <p>7 many years while the product was on</p> <p>8 the market. That it was conducted</p> <p>9 both inside by Johnson & Johnson</p> <p>10 and by outside entities and</p> <p>11 laboratories as we discussed today.</p> <p>12 And that that testing was all in</p> <p>13 totality showing that there was no</p> <p>14 asbestos in the product.</p> <p>15 BY MS. BROWN:</p> <p>16 Q. You were asked -- first of all,</p> <p>17 you were shown this exhibit, which counsel</p> <p>18 marked as JOS 4 and he wrote, "Secret</p> <p>19 equals Alice Blount found asbestos in</p> <p>20 JBBP." I think he meant JBP. Do you see</p> <p>21 that?</p> <p>22 A. I do.</p> <p>23 Q. First of all, do you have a</p> <p>24 memory of receiving any information about</p>	<p style="text-align: right;">Page 826</p> <p>1 determination about whether or not this</p> <p>2 statement is true, Alice Blount found</p> <p>3 asbestos?</p> <p>4 A. No.</p> <p>5 Q. Who would be in charge of</p> <p>6 something like that?</p> <p>7 A. That type of information would</p> <p>8 be assessed like other scientific</p> <p>9 information by the scientists.</p> <p>10 Q. Okay. And even though you</p> <p>11 don't have a perfect recollection about</p> <p>12 what happened here with this Blount letter,</p> <p>13 what was the practice in terms of that</p> <p>14 evaluation?</p> <p>15 MR. TISI: Objection to</p> <p>16 form.</p> <p>17 THE WITNESS: Well, the</p> <p>18 company would always examine --</p> <p>19 from time to time the company had</p> <p>20 reports of talc in -- its talcum</p> <p>21 powder containing asbestos and it's</p> <p>22 my understanding that what they did</p> <p>23 was they would look into those and</p> <p>24 examine and determine for</p>
<p style="text-align: right;">Page 825</p> <p>1 Dr. Blount?</p> <p>2 A. No, I don't. I think I</p> <p>3 testified to that. I don't recall it.</p> <p>4 Q. Do you have a memory of any</p> <p>5 specific analysis of Dr. Blount's purported</p> <p>6 findings?</p> <p>7 A. I do not.</p> <p>8 Q. Sitting here today, can you</p> <p>9 remember the specifics of anything that Dr.</p> <p>10 Blount may have claimed to have found?</p> <p>11 A. I don't.</p> <p>12 Q. Okay. What is your</p> <p>13 understanding generally about how you dealt</p> <p>14 with information like the letter regarding</p> <p>15 Alice Blount?</p> <p>16 A. I believe I testified that, you</p> <p>17 know, I have no recollection of it, but</p> <p>18 issues such as this, it would have been our</p> <p>19 practice to discuss it with the company</p> <p>20 people and I say "us," I would say, you</p> <p>21 know, outside counsel who sent me the</p> <p>22 information and myself.</p> <p>23 Q. You were asked -- and would</p> <p>24 you, Mr. O'Shaughnessy, make a personal</p>	<p style="text-align: right;">Page 827</p> <p>1 themselves how they assessed</p> <p>2 whether that was accurate, reliable</p> <p>3 or not.</p> <p>4 BY MS. BROWN:</p> <p>5 Q. And you were asked a number of</p> <p>6 questions about whether you took the</p> <p>7 information contained in a letter from your</p> <p>8 lawyer and relayed it to entities like the</p> <p>9 NTP. Do you recall those questions?</p> <p>10 A. I do, yes.</p> <p>11 Q. And I know you don't recall a</p> <p>12 ton of the specifics about Dr. Blount, but</p> <p>13 do you recall generally, were her purported</p> <p>14 findings published?</p> <p>15 MR. PLACITELLA:</p> <p>16 Objection to form.</p> <p>17 THE WITNESS: I think,</p> <p>18 yes, I think there was a</p> <p>19 publication in 1991 by Dr. Blount.</p> <p>20 BY MS. BROWN:</p> <p>21 Q. And I want to show you a</p> <p>22 document that we'll mark as Defense</p> <p>23 Exhibit 3. This is a document that we've</p> <p>24 marked as Defense Exhibit 3 and it is on</p>

<p style="text-align: right;">Page 828</p> <p>1 CTFA letterhead, the Cosmetic, Toiletry, 2 and Fragrance Association. Do you see 3 that? 4 A. I do. 5 ----- 6 (Letter dated 3/18/02 Bates 7 JNJTALC00109268 to 109278 marked 8 O'Shaughnessy Exhibit D-3 for 9 identification.) 10 ----- 11 BY MS. BROWN: 12 Q. And do you know generally what 13 the CTFA is? 14 A. Like we discussed, it was an 15 industry group for companies in that 16 industry of cosmetics, toiletry, and 17 fragrances. 18 Q. And it is a letter to whom, 19 Mr. O'Shaughnessy? 20 A. This is a letter to Dr. Kenneth 21 Olden who is the director of the National 22 Toxicology Program of the National 23 Institute of Environmental Health Services. 24 Q. Okay. And would you tell our</p>	<p style="text-align: right;">Page 830</p> <p>1 authored by Blount and Vassiliou, 1983, 2 Identification of chlorite and serpentine 3 in cosmetic or pharmaceutical talc. 4 Published in the Environmental Health 5 Perspect. I don't know the correct title 6 of that publication. 7 Q. And would you have been the 8 person, Mr. O'Shaughnessy, to have 9 scientific discussions with the NTP about 10 references like the ones contained in this 11 letter? 12 A. No. 13 Q. You were asked a lot of 14 questions about whether the Blount letter 15 went to the FDA, went to the NTP, would you 16 have been the person to engage in those 17 kind of scientific discussions? 18 A. No, that was not my role. 19 Q. Did you attend the public NTP 20 hearings and participate in scientific 21 debate and discussions about references 22 including those cited on this list? 23 A. I went to that one meeting and 24 I forget which meetings it was, NTP, but I</p>
<p style="text-align: right;">Page 829</p> <p>1 jurors what information is contained in the 2 second paragraph? 3 A. I'll read it. It says "In an 4 attempt to clarify issues that were raised 5 in the initial Draft Background Document in 6 discussion at the RoC subcommittee meeting 7 and in your letter of July 9, we have 8 completed an updated review and analysis of 9 the literature. Our findings include some 10 90 studies, articles, and commentaries, 11 more than 50 of which (the ones preceded an 12 asterisk) that are not referenced in the 13 initial DBD," which is the Draft Background 14 Document. "While not all of the additional 15 references may meet NTP criteria for use in 16 a DBD, we believe they provide useful 17 information relevant to the subject 18 matter." 19 Q. And in terms of the 50 studies, 20 articles, or commentaries that had an 21 asterisk and were not referenced by the NTP 22 but were provided by the CTFA, would you 23 tell our jurors what number 55 was? 24 A. Number 55 was an article</p>	<p style="text-align: right;">Page 831</p> <p>1 went as an observer to keep my myself 2 abreast of what was going on. 3 Q. Was it your role as a lawyer 4 for Johnson & Johnson to be the person 5 engaging in scientific discussions with 6 regulators? 7 A. No. 8 Q. And do you have firsthand 9 knowledge or would you about how the NTP, 10 what the NTP did with this information? 11 A. No. 12 Q. You were asked a number of 13 questions about an affidavit that was 14 prepared by Mr. Ashton regarding the 15 Johnson mine in Vermont. Do you recall 16 that? 17 A. Yes. 18 Q. And first of all, can you tell 19 our jurors just generally who Mr. Ashton 20 was? 21 A. Mr. Ashton was an employee of 22 the company for a number of years and as I 23 knew him, he was primarily devoted to the 24 research of geology and mineralogy related</p>

<p style="text-align: right;">Page 832</p> <p>1 to talc on behalf of the company.</p> <p>2 Q. And you were shown a multi-page</p> <p>3 affidavit by Mr. Ashton stating that</p> <p>4 there's no asbestos in the Johnson mine and</p> <p>5 providing his support for that statement.</p> <p>6 Do you recall that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And to the best of your</p> <p>9 knowledge, did Johnson & Johnson ever use</p> <p>10 talc from the Johnson mine in its baby</p> <p>11 powder?</p> <p>12 A. No, that was used for</p> <p>13 industrial talc.</p> <p>14 Q. And to the best of your</p> <p>15 knowledge, were the sources cited in</p> <p>16 Mr. Ashton's affidavit truthful and</p> <p>17 accurate?</p> <p>18 A. Yes, they were published</p> <p>19 sources, yes.</p> <p>20 Q. And to the best of your</p> <p>21 knowledge, were the statements made in</p> <p>22 Mr. Ashton's affidavit truthful and</p> <p>23 accurate?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 834</p> <p>1 BY MS. BROWN:</p> <p>2 Q. Dr. Gale. We'll get to it.</p> <p>3 Relax. Do you have any information about</p> <p>4 who those folks were?</p> <p>5 A. No.</p> <p>6 Q. What their role was in</p> <p>7 litigation?</p> <p>8 A. No.</p> <p>9 Q. Have you ever reviewed the</p> <p>10 totality of those transcripts?</p> <p>11 A. No.</p> <p>12 Q. You were shown a transcript,</p> <p>13 which was at Exhibit 436, and it was a</p> <p>14 deposition, I'm going to have to take this</p> <p>15 out of here, just a second. You were shown</p> <p>16 a deposition of Peter Gale. Do you recall</p> <p>17 that generally?</p> <p>18 A. Yes.</p> <p>19 Q. I mean, do you have any idea</p> <p>20 who Peter Gale is?</p> <p>21 A. I do not.</p> <p>22 Q. You were shown some selected</p> <p>23 testimony about Mr. Gale's purported</p> <p>24 finding of asbestos in talc. Do you</p>
<p style="text-align: right;">Page 833</p> <p>1 MR. TISI: Objection.</p> <p>2 BY MS. BROWN:</p> <p>3 Q. You were shown a bunch of</p> <p>4 snippets from other people's depositions</p> <p>5 regarding the Johnson mine. Do you</p> <p>6 remember that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. First of all, do you have any</p> <p>9 idea who those folks are?</p> <p>10 A. No.</p> <p>11 Q. Do you know if they were being</p> <p>12 paid by plaintiffs' lawyers in litigation?</p> <p>13 MR. PLACITELLA:</p> <p>14 Objection, there's no basis for</p> <p>15 that and you know it.</p> <p>16 MS. BROWN: It's</p> <p>17 actually in the transcript, we can</p> <p>18 look at it.</p> <p>19 MR. PLACITELLA: Dr.</p> <p>20 Hemstock was being paid by the</p> <p>21 plaintiffs' lawyer?</p> <p>22 MS. BROWN: Dr. Gale.</p> <p>23 Dr. Gale was a paid expert.</p> <p>24 MR. PLACITELLA: Who?</p>	<p style="text-align: right;">Page 835</p> <p>1 remember that?</p> <p>2 MR. PLACITELLA:</p> <p>3 Objection to the form.</p> <p>4 THE WITNESS: I remember</p> <p>5 being shown excerpts, yes.</p> <p>6 BY MS. BROWN:</p> <p>7 Q. And you never read the totality</p> <p>8 of this deposition?</p> <p>9 A. No, never.</p> <p>10 Q. I mean, do you think it's</p> <p>11 important if you're going to comment or</p> <p>12 question about somebody's sworn testimony</p> <p>13 to read and consider the whole thing?</p> <p>14 MR. TISI: Objection.</p> <p>15 MR. PLACITELLA:</p> <p>16 Objection.</p> <p>17 THE WITNESS: Well,</p> <p>18 depositions are usually lengthy, as</p> <p>19 we know from my experience here.</p> <p>20 And there's a lot of testimony, so</p> <p>21 in order to have the context of it,</p> <p>22 that is certainly something you</p> <p>23 need to do.</p> <p>24</p>

<p style="text-align: right;">Page 836</p> <p>1 BY MS. BROWN:</p> <p>2 Q. And I want to show you a part</p> <p>3 of -- as it relates to -- you were shown</p> <p>4 some testimony about a purported finding of</p> <p>5 asbestos. Do you remember that?</p> <p>6 A. Yes.</p> <p>7 MR. PLACITELLA:</p> <p>8 Objection to form.</p> <p>9 BY MS. BROWN:</p> <p>10 Q. And I want to show you some</p> <p>11 other testimony that in fairness, sir, you</p> <p>12 weren't shown. And could you read starting</p> <p>13 at line 8, the question that Mr. Gale was</p> <p>14 asked at the end of his deposition when the</p> <p>15 other lawyers had a chance to question.</p> <p>16 A. Question: "Is it possible that</p> <p>17 an element that you may have identified as</p> <p>18 chrysotile by using the earlier two methods</p> <p>19 that you talked about and not performing an</p> <p>20 elemental analysis, could after elemental</p> <p>21 analysis be determined to be something</p> <p>22 other than chrysotile?"</p> <p>23 There was an objection and</p> <p>24 then the witness answered "That is a</p>	<p style="text-align: right;">Page 838</p> <p>1 BY MS. BROWN:</p> <p>2 Q. You were -- when you were being</p> <p>3 asked some questions about test results,</p> <p>4 there was something you wanted to explain</p> <p>5 about what you were thinking when you were</p> <p>6 looking at them and there was an objection</p> <p>7 and a motion to strike your answer. And so</p> <p>8 I want to give you the opportunity to</p> <p>9 explain to our jurors, when you were</p> <p>10 looking at that backup data and you were</p> <p>11 looking at those test results, was there</p> <p>12 something you wanted to continue on in your</p> <p>13 answer?</p> <p>14 MR. TISI: Objection.</p> <p>15 Improper question.</p> <p>16 THE WITNESS: I believe</p> <p>17 so. And that is, you know, being</p> <p>18 shown, and I think I specifically</p> <p>19 said my eyes were glazing over,</p> <p>20 because I have no way of</p> <p>21 interpreting those documents. I</p> <p>22 rely on the scientists and, you</p> <p>23 know, they were shown to me along</p> <p>24 with maybe deposition transcript</p>
<p style="text-align: right;">Page 837</p> <p>1 possibility."</p> <p>2 Q. And continuing on, what about</p> <p>3 the next question?</p> <p>4 A. Question: "Did you recommend</p> <p>5 that Engelhard pursue further analysis of</p> <p>6 these samples along the lines that you've</p> <p>7 identified?"</p> <p>8 Q. And what was --</p> <p>9 A. There was an objection and the</p> <p>10 answer was no.</p> <p>11 Q. Okay. And so in terms of the</p> <p>12 snippet of the testing results that you</p> <p>13 were shown from Mr. Gale, are you in a</p> <p>14 position to evaluate the accuracy or the</p> <p>15 significance of those?</p> <p>16 A. No.</p> <p>17 Q. Do you defer to somebody else</p> <p>18 for that kind of stuff?</p> <p>19 MR. PLACITELLA:</p> <p>20 Objection to form.</p> <p>21 THE WITNESS: Anything</p> <p>22 with respect to scientific findings</p> <p>23 and testing, I would defer to the</p> <p>24 scientists.</p>	<p style="text-align: right;">Page 839</p> <p>1 quotes and things of that nature.</p> <p>2 And to me, they were -- they were</p> <p>3 totally different from each other.</p> <p>4 One was testimony and one was some</p> <p>5 scientific document. And I had no</p> <p>6 way based on my experience to and</p> <p>7 lack of expertise to correlate the</p> <p>8 two. And so I was asked questions</p> <p>9 about that and I couldn't answer</p> <p>10 them.</p> <p>11 BY MS. BROWN:</p> <p>12 Q. Who do you think would be</p> <p>13 better able to answer those kind of</p> <p>14 questions?</p> <p>15 MR. PLACITELLA:</p> <p>16 Objection to form.</p> <p>17 THE WITNESS: The people</p> <p>18 at the company who actually perform</p> <p>19 the testing and dealt with it and</p> <p>20 are familiar with it.</p> <p>21 BY MS. BROWN:</p> <p>22 Q. Do you believe, sitting here</p> <p>23 today, Mr. O'Shaughnessy, that the</p> <p>24 statements that were made to courts and</p>

<p style="text-align: right;">Page 840</p> <p>1 plaintiffs during the time period that you 2 worked at Johnson & Johnson were truthful 3 and accurate? 4 A. They were truthful and 5 accurate, yes. 6 Q. You were asked two days ago 7 about what was marked as Exhibit 74 to your 8 deposition, a memo dated January 24, 1995, 9 from Neal Matheson and the subject was 10 proposal for a new talc study. 11 A. I recall -- 12 MR. TISI: Objection, 13 misstates the document. It's not 14 from Neal Matheson. It's to Neal 15 Matheson. 16 BY MS. BROWN: 17 Q. Oh, that's fair. Hold on. 18 Let's get this right. You were shown 19 Exhibit 74 dated January 24, 1995, and it 20 is a letter from Donald Jones to Neal 21 Matheson and the subject is proposal for 22 new talc study. Do you remember that? 23 A. I do. 24 Q. And you were asked really a lot</p>	<p style="text-align: right;">Page 842</p> <p>1 A. It does, yeah. 2 Q. Okay. And a lot of the 3 documents you were shown had you sort of 4 cc'd. Do you remember that? 5 A. Yes. 6 Q. And lot of them dealt with 7 scientific or epidemiology issues. Do you 8 remember those questions? 9 A. Yes, I do. 10 Q. Was your understanding -- what 11 was your understanding as to why you were 12 copied on those types of documents? 13 MR. TISI: Objection. I 14 think you should rephrase the 15 question, because I think it may 16 call for attorney work product and 17 attorney-client privilege and if 18 you open the door, I'm going to go 19 through it. 20 MS. BROWN: This has 21 nothing to do with talking to 22 lawyers. 23 MR. TISI: Well, I think 24 you have to preface it.</p>
<p style="text-align: right;">Page 841</p> <p>1 of questions about this proposed new talc 2 study. Do you remember those? 3 A. Yes. 4 Q. Was it your role at the company 5 as a lawyer for Johnson & Johnson to 6 evaluate the proprietary of a proposal for 7 a study? 8 MR. TISI: Objection. 9 THE WITNESS: No. 10 BY MS. BROWN: 11 Q. Were you involved in your role 12 as a lawyer for Johnson & Johnson in 13 discussions about the potential merits or 14 lack thereof of any scientific study 15 proposal? 16 A. No, I had no role in that 17 process. 18 Q. And I think how we got to this 19 is that there's a list of people who are 20 carbon copied here, right? 21 A. Yes. 22 Q. And that's, like, not a thing 23 anymore, but it means that a copy was sent 24 to you, right?</p>	<p style="text-align: right;">Page 843</p> <p>1 BY MS. BROWN: 2 Q. What was your understanding of 3 your role as it relates to issues like this 4 proposal for a new talc study? 5 A. I believe I testified my role 6 is, as you know, an attorney for the 7 company, and the company, these people knew 8 I was handling litigation and I would often 9 be copied on materials that they thought 10 might be relevant to that and that's why I 11 would get it. 12 MR. TISI: Objection to 13 move to strike as being 14 speculative. 15 BY MS. BROWN: 16 Q. Did you understand there to be 17 a suggestion that Johnson & Johnson was 18 purposefully not funding a study because it 19 was trying to hide a dangerous product? 20 A. I think the theme here that I'm 21 picking up in the litigation on behalf of 22 the Plaintiffs is that Johnson & Johnson 23 somehow hid information regarding science, 24 regarding talc.</p>

<p style="text-align: right;">Page 844</p> <p>1 Q. And based on your experience 2 and your participation in things like the 3 talc steering committee, is that truthful 4 and accurate? 5 MR. TISI: Objection. 6 THE WITNESS: No, based 7 on my experience, no. 8 BY MS. BROWN: 9 Q. And so you were asked a ton of 10 questions about this particular proposal 11 for a new study and if we look at some 12 additional information provided under cost 13 and timing, would you tell our jurors how 14 many people this proposed study sought to 15 evaluate? 16 A. The document reads, "The study 17 is expected to require two-plus years and 18 report 171 cases and 171 controls." 19 Q. And the date of this proposal 20 for a study of approximately three- or 400 21 people is what? 22 A. The date on the memo is 23 January 24, 1995. 24 Q. Okay. And what I would like to</p>	<p style="text-align: right;">Page 846</p> <p>1 A. No. 2 Q. Were you involved in any 3 discussions about whether or not the case 4 control studies that were published in 1995 5 were bigger or better or more significant 6 than the proposal Johnson & Johnson 7 received? 8 A. No. 9 Q. Do you have any information 10 about whether or not the studies from 1992 11 to 1999 that were published studied more, 12 less, or the same amount of women that were 13 referenced in the study proposal? 14 A. I don't -- I don't know. 15 Q. Were those discussions you 16 would have been involved in as a lawyer at 17 Johnson & Johnson? 18 A. No, no. 19 Q. Do you have any information 20 about the scientific merits of the proposed 21 study versus studies that were done during 22 that time period or before? 23 A. No, I do not. That's well 24 beyond my expertise.</p>
<p style="text-align: right;">Page 845</p> <p>1 mark as Exhibit 4 to your deposition is a 2 chart, I'll represent to you, of studies, 3 case control studies that were published 4 during the years 1992 to 1999. Do you see 5 that? 6 A. I do. 7 - - - - - 8 (Case Control Studies that were 9 Published from 1992 to 1999 marked 10 O'Shaughnessy Exhibit D-4 for 11 identification.) 12 - - - - - 13 BY MR. PLACITELLA: 14 Q. And first of all, in terms of 15 your role as a lawyer, were you in charge 16 of evaluating the significance or findings 17 of these epidemiology studies? 18 A. No. 19 Q. When you were asked a ton of 20 questions about this proposal for a new 21 study in 1995, were you involved in any 22 discussions about how the 1995 study 23 proposal compared to the two studies that 24 were published in 1995?</p>	<p style="text-align: right;">Page 847</p> <p>1 Q. Were you shown any of the 2 prospective cohort studies that were done, 3 for example, the Nurses' Health Study or 4 the Women's Health Initiative? 5 A. During the deposition, no. 6 Q. Are you aware generally that 7 there were a number of government-funded 8 prospective or forward-looking studies that 9 were done throughout the '90s and the 10 2000s? 11 A. Yes. 12 Q. Okay. And were you involved in 13 any discussions at Johnson & Johnson about 14 how the strength of those studies and the 15 size of those studies compared to the 16 proposed study that you were shown at 17 Exhibit 74? 18 A. No. 19 Q. Okay. And in terms of 20 evaluating and understanding the 21 significance of those prospective 22 government-funded studies, is that 23 something you would be involved in as a 24 lawyer for Johnson & Johnson?</p>

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1 A. No, again, that would be the
2 scientists at the company.
3 Q. If Plaintiffs' lawyers really
4 wanted to understand the scientific merits
5 or lack thereof of this 1995 proposed case
6 control study, are you the person they
7 should talk to?
8 A. No.
9 MS. BROWN:
10 Mr. O'Shaughnessy, thank you so
11 much for your patience and for
12 taking the time to answer my
13 questions. I appreciate it.
14 THE WITNESS: Thank you.
15 MR. PLACITELLA: So what
16 do you want to do here?
17 MS. BROWN: Let's go.
18 MR. PLACITELLA: Do you
19 want to take a break?
20 MS. BROWN: Oh, yeah,
21 let's take five minutes.
22 THE VIDEOGRAPHER: Off
23 the record, 5:33.
24 - - - - -

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1 (A recess was taken at this time.)
2 - - - - -
3 THE VIDEOGRAPHER: We
4 are back on the record at 5:51 p.m.
5 BY MR. TISI:
6 Q. All right. Mr. O'Shaughnessy,
7 I'm going to try to be as quick as and
8 efficient as I can. I promised you when I
9 was on a break.
10 A. Thank you.
11 Q. But I am going to jump around a
12 little bit, because I'm following the J&J
13 lawyer's questions.
14 A. I understand.
15 Q. So if for some reason I kind of
16 bear quickly to the right and you don't see
17 where, I'm going to ask you to let me know
18 that. Okay?
19 A. I will.
20 Q. All right. So let's just start
21 kind of refocusing. I would like to really
22 reset a little bit what I really was asking
23 you in the direct examination. Did I ask
24 you any questions about, you know, how many

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1 people would be enrolled in the study, in a
2 study or, you know, what statistical
3 analyses would be done and all of those
4 things? Did I ask you any of those
5 questions?
6 A. I don't believe you did.
7 Q. Okay. What I asked you about
8 was in the 1990s when you first started to
9 be involved in the Worldwide Talc Steering
10 Committee, I asked you these questions.
11 And I'm really going to come back to these
12 questions. I asked you whether there were
13 proposals on the table that women would be
14 warned of the risk, the potential risk of
15 ovarian cancer. Remember those questions?
16 A. I do.
17 Q. I asked you whether or not
18 women would be instructed not -- whether it
19 was reasonable for women to be told not to
20 use talc, you know, in their genital area.
21 Do you remember those questions?
22 A. Questions along those lines.
23 Q. I asked you whether or not
24 there were proposals out there in realtime,

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1 not made up by the lawyers, right,
2 proposals by scientists and researchers,
3 including the American Cancer Society, that
4 women -- that women not use talcum powders,
5 but switch to cornstarch products. Do you
6 remember those?
7 A. I recall you showing me some
8 documents that stated things like that.
9 Q. Correct. And then I also asked
10 you whether or not there was in realtime,
11 not by me, not by Mr. Placitella --
12 A. I don't know what you mean by
13 realtime.
14 Q. In realtime, in the 1990s.
15 A. Okay.
16 Q. Okay. I asked you whether or
17 not in realtime, not by lawyers, because
18 there wasn't even ovarian cancer cases at
19 that time, right?
20 A. I don't believe there were.
21 Q. Okay. I asked you whether or
22 not there were proposals about studying
23 ovarian cancer made directly to Johnson &
24 Johnson. Do you remember that?

<p style="text-align: right;">Page 852</p> <p>1 A. I don't, Mr. Tisi. Maybe it's 2 just a fog up -- 3 Q. Well, I asked -- I'm sorry. I 4 asked you whether or not, remember I showed 5 you a study not for the purposes of asking 6 you whether it was good study or a bad 7 study, I asked you whether or not the 8 conclusion of the study was do more 9 studies. And that was the Gross paper, 10 remember that? 11 A. You had me read from papers and 12 Gross was one of them. 13 Q. Right. And I asked you to look 14 at the Harlow paper and what I really 15 pointed out to you was the suggestion that 16 women be told not to use talc in light of 17 what was known at that time? 18 A. I remember you -- we discussing 19 the Harlow paper. 20 Q. Right, so all the questions 21 that the lawyer for Johnson & Johnson asked 22 you about study designs and all those kinds 23 of things, those weren't questions I asked 24 you, were they?</p>	<p style="text-align: right;">Page 854</p> <p>1 were "definitive," "important," all of 2 those questions -- 3 A. I remember those. 4 Q. And I made a long list of those 5 questions, right? 6 A. You did. 7 Q. I didn't ask you whether or not 8 you found it to be definitive, important, 9 substantive, all those adjectives, did I? 10 A. You had me read from the 11 document. 12 Q. Right. The document written by 13 the scientists? 14 MS. BROWN: Objection. 15 Misstates the document. 16 THE WITNESS: I forget 17 who authored it. 18 BY MR. TISI: 19 Q. Okay. It was Mr. Jones, but 20 we'll look at that really quickly. 21 A. Okay. 22 Q. But in fairness to both you and 23 me, I was focusing my questions on what 24 nonscientific recommendations were made out</p>
<p style="text-align: right;">Page 853</p> <p>1 MS. BROWN: Objection to 2 the form. 3 THE WITNESS: The 4 question that she asked me, was I 5 familiar with that or did I play a 6 role in it. 7 BY MR. TISI: 8 Q. Okay. So let's kind of refocus 9 on where I was really asking you, because I 10 understand that there are other people who 11 are scientists at Johnson & Johnson, 12 correct? 13 A. Yes. 14 Q. And I asked you, for example, 15 with respect to the study proposal by Dr. 16 Muscat, whether or not the scientists 17 recommended that the study be done. Do you 18 remember those questions? 19 A. I remember and there was some 20 documents. 21 Q. Right. And there was some 22 documents that said, you know, we've looked 23 at the study, it looks like a really great 24 study. In fact, the words that were used</p>	<p style="text-align: right;">Page 855</p> <p>1 there. Okay. So let me ask you this 2 question. When I asked, counsel asked you, 3 the lawyer for J&J asked you about 4 forward-looking and backward-looking 5 studies. Do you remember her questions 6 about forward looking and backward looking. 7 Do you remember those? 8 A. She mentioned the studies, yes. 9 Q. Right. A cohort study by -- 10 funded by the government, right? 11 A. Yes. 12 Q. Do you remember she asked you 13 those questions? 14 A. Yes. 15 Q. Okay. Let's talk about those 16 for a moment. Did counsel ask you 17 questions about the cohort studies? For 18 example, whether or not the studies funded 19 by the government were even designed to 20 look initially to look at the risk of 21 ovarian cancer and the relationship to 22 talc? 23 A. No, I don't think Ms. Brown 24 asked me that.</p>

<p style="text-align: right;">Page 856</p> <p>1 Q. All right. Did she ask you how 2 many people within the cohort actually had 3 ovarian cancer? 4 A. I don't recall -- I'm sorry, 5 she did not ask me that detail. 6 Q. She didn't ask you, for 7 example, what the women in the cohort were 8 asked about their exposure to talc or when 9 they were asked, did she? 10 A. No. 11 Q. Okay. And so the question 12 about whether the cohort studies are better 13 than case control studies are best left to 14 the epidemiologists, correct, and the 15 scientists? 16 A. Yes, yes. 17 Q. So the scientific question, 18 okay, is one that I wasn't asking you, in 19 all fairness to me, I was asking you 20 whether or not the company was told to 21 initiate studies and we looked at documents 22 that indicated that there were -- that 23 scientists were saying there's a concern 24 about ovarian cancer and talc, correct?</p>	<p style="text-align: right;">Page 858</p> <p>1 Muscat study be done? 2 MS. BROWN: Objection, 3 misstates the evidence and lacks 4 foundation. 5 THE WITNESS: I take 6 your word for it. I was copied on 7 some things and some things I was 8 shown that I wasn't -- I had no -- 9 I wasn't part of it and I didn't -- 10 BY MR. TISI: 11 Q. Well, would you bring up 12 Exhibit No. 74, please. 13 A. -- analyze. 14 Q. Because, again, I want to be 15 fair to you. 16 A. No, no, you know, you're asking 17 me questions about the testimony yesterday. 18 Q. I have no problem -- 19 A. It's kind of a jumble, but that 20 will be fine. And I understand what you're 21 doing, so that's fine. 22 Q. Yeah. No, I do want to be fair 23 to you, because I don't want there to be 24 any suggestion that I was unfair to you, as</p>
<p style="text-align: right;">Page 857</p> <p>1 MS. BROWN: Object, that 2 misstates the testimony and the 3 evidence. 4 THE WITNESS: Yeah, you 5 know, we discussed these issues, I 6 just don't know, I don't have a 7 clear memory of the exact 8 questions, but yeah, I follow you. 9 BY MR. TISI: 10 Q. And then I asked you whether or 11 not it came to your personal attention that 12 after the meeting at the FDA in January 13 of two thousand -- excuse me, 1994, whether 14 or not scientists came to J&J and proposed 15 a study. Do you remember that? 16 A. I don't remember specifically, 17 but I'll accept, you know -- 18 Q. Well, it's the Muscat study. 19 A. Okay. 20 Q. So in 1995 -- 21 A. There was -- I'm sorry, I 22 didn't want to interrupt you. 23 Q. I'm sorry, in 1995, you 24 received a memo that recommended that the</p>	<p style="text-align: right;">Page 859</p> <p>1 a lawyer to a lawyer, about scientific 2 questions. So let's look at the document 3 that was sent to you as a lawyer. Okay. 4 So let's look at Exhibit No. 74 again. 5 A. Okay. 6 Q. And I've put it up on the 7 screen. And this document indicates that, 8 the first paragraph says "This recommends 9 that J&J sponsor a new highly structured 10 epidemiology study focused to examine the 11 possibility that talc can lead to increased 12 risk of ovarian cancer." That's a document 13 you received, correct? 14 A. I believe I was copied on it. 15 You showed that to me. 16 Q. And that follows the Gates -- 17 the Gross study which published that 18 additional studies need to be done, 19 correct? 20 A. I remember you going through 21 that, yes. 22 Q. And remember I showed you an 23 email from Dr. Gettings that he spoke to 24 the FDA and they said additional work</p>

<p style="text-align: right;">Page 860</p> <p>1 needed to be done, correct?</p> <p>2 A. Yes. I don't recall exactly</p> <p>3 what it was.</p> <p>4 Q. So in the context of what was</p> <p>5 really happening in realtime, okay, there</p> <p>6 was a general feeling that there was this</p> <p>7 concern out there for women who have the</p> <p>8 potential of getting ovarian cancer from</p> <p>9 talc and a suggestion that additional</p> <p>10 studies be done?</p> <p>11 A. In those documents, yes.</p> <p>12 Q. All right. And the words that</p> <p>13 I pulled out of this document were words</p> <p>14 that are actually in the document. Things</p> <p>15 like potentially significant. This would</p> <p>16 be a definitive treatise. All those words</p> <p>17 that I wrote down for you, okay, were words</p> <p>18 that I didn't use, they were words that</p> <p>19 were in a document that you got, true?</p> <p>20 A. You did do that, yes.</p> <p>21 Q. Okay. So I didn't make that</p> <p>22 up, did I?</p> <p>23 A. No, you took the words from a</p> <p>24 document and put them on that machine there</p>	<p style="text-align: right;">Page 862</p> <p>1 you're asking a witness questions, just</p> <p>2 like we've done for you over a couple days,</p> <p>3 we would do one topic here, one topic</p> <p>4 there, we cover a lot of ground, right?</p> <p>5 A. Certainly with me you did.</p> <p>6 Q. With you, we did. And I'll</p> <p>7 tell you, I covered the same ground with</p> <p>8 Dr. Muscat and I asked him the questions of</p> <p>9 whether or not these forward-looking</p> <p>10 studies was something that even in</p> <p>11 retrospect, you know, he wishes that he</p> <p>12 would have suggested. So I'm going to play</p> <p>13 that for you. Could you look at Exhibit</p> <p>14 No. 80? Can you please play the second</p> <p>15 clip that I pulled from Dr. Muscat,</p> <p>16 Exhibit 82.</p> <p>17 MS. BROWN: I object on</p> <p>18 foundation grounds.</p> <p>19 MR. PLACITELLA: It</p> <p>20 doesn't look like Susan Sharko.</p> <p>21 MR. TISI: Are we able</p> <p>22 to show Exhibit 82, the video clip?</p> <p>23 THE VIDEOGRAPHER: Mike</p> <p>24 is playing it. I don't see it.</p>
<p style="text-align: right;">Page 861</p> <p>1 and wrote them down.</p> <p>2 Q. Okay. And kind of anticipating</p> <p>3 that Ms. Brown would ask you about all the</p> <p>4 other studies that came after that, would</p> <p>5 it surprise you that I asked Dr. Muscat</p> <p>6 that very question about whether or not at</p> <p>7 some point later in time, you know, that</p> <p>8 maybe a cohort study might have been a</p> <p>9 better thing and did he ever at some later</p> <p>10 time suggest that the company do that?</p> <p>11 Would that surprise you that when you --</p> <p>12 A. I'm not following that</p> <p>13 question.</p> <p>14 Q. All right.</p> <p>15 MS. BROWN: Objection.</p> <p>16 BY MR. TISI:</p> <p>17 Q. One of the things that counsel</p> <p>18 asked you was whether or not you should</p> <p>19 look at the entire depositions of -- to</p> <p>20 address multiple issues, right? Do you</p> <p>21 remember --</p> <p>22 A. Well, to understand the</p> <p>23 testimony.</p> <p>24 Q. Correct. And sometimes when</p>	<p style="text-align: right;">Page 863</p> <p>1 MR. TISI: Is Mike</p> <p>2 there?</p> <p>3 THE VIDEOGRAPHER: Yeah,</p> <p>4 he put up the document.</p> <p>5 MR. TISI: It's not a</p> <p>6 document.</p> <p>7 THE VIDEOGRAPHER: He</p> <p>8 put up the last thing.</p> <p>9 MR. TISI: I don't see</p> <p>10 it.</p> <p>11 THE VIDEOGRAPHER: I</p> <p>12 don't know.</p> <p>13 BY MR. TISI:</p> <p>14 Q. Well, would it surprise that</p> <p>15 you even in retrospect, Dr. Muscat said</p> <p>16 look, I didn't propose a cohort study, the</p> <p>17 best study I could think of was a case</p> <p>18 control analysis?</p> <p>19 MS. BROWN: That</p> <p>20 misstates his testimony and lacks</p> <p>21 foundation.</p> <p>22 THE WITNESS: Surprise</p> <p>23 isn't a word I would use. I don't</p> <p>24 have a reaction to it since I'm not</p>

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1 familiar with the issues.
2 BY MR. TISI:
3 Q. Okay. Now --
4 MR. TISI: Could you put
5 it up on the screen?
6 - - - - -
7 (Whereupon video clip was played.)
8 - - - - -
9 (Muscat Video Clip marked
10 O'Shaughnessy Exhibit 82 for
11 identification.)
12 - - - - -
13 BY MR. TISI:
14 Q. Let's stop there.
15 MS. BROWN: I'm
16 objecting to the playing of this --
17 MR. TISI: Do you see
18 where I asked him -- I'm sorry, do
19 you want to object?
20 MS. BROWN: I do want to
21 object to just playing portions of
22 somebody else's deposition into the
23 record. He has never reviewed
24 that --

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1 BY MR. TISI:
2 Q. That's fine. In light of
3 Ms. Brown's questions to you about whether
4 or not maybe a cohort study might have been
5 a better design, you understand that doctor
6 and I know you're not a doctor, an
7 epidemiologist or a doctor, but the
8 epidemiologist that J&J had retained, you
9 saw his testimony, he never recommended a
10 cohort study, did he?
11 A. I don't know what would be the
12 better design or a better study to do. I
13 don't think Ms. Brown asked me that
14 question and I can't comment on what, you
15 know, Dr. Muscat said. His testimony
16 speaks for itself.
17 Q. Right?
18 A. And I'm familiar with it or
19 aware of it and I would defer to the
20 scientists.
21 Q. Right. And in fairness to me,
22 I never raised the question of cohort
23 study. That was a question that was asked
24 by your counsel, correct?

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1 MS. BROWN: I object to
2 the question.
3 THE WITNESS: She
4 certainly asked me that. I don't
5 know if it came up during the
6 deposition.
7 BY MR. TISI:
8 Q. All right. So let's move on.
9 I asked you -- you were asked some
10 questions about the other case control --
11 the other case control studies that
12 happened in 1995 when this Muscat study was
13 being proposed, the better definitive study
14 that was described. Remember she asked you
15 about the Purdie and the Cramer studies?
16 A. She showed me a chart with
17 studies on it.
18 Q. Right. And she kind of
19 highlighted the ones from 1995?
20 A. Yes.
21 Q. Would it surprise you that the
22 Purdie study showed an increased risk
23 association for ovarian cancer in the range
24 of almost 30 percent?

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1 A. I wouldn't --
2 MS. BROWN: Object,
3 lacks foundation.
4 THE WITNESS: I can't
5 say surprised. Surprised isn't a
6 term I would use. I'm not that
7 familiar with it, so I can't
8 comment on it.
9 BY MR. TISI:
10 Q. Honestly, I didn't raise the
11 Purdie study, Ms. Brown did, so she asked
12 about those other studies. So I'm asking
13 you, would it surprise you that the Cramer
14 study from 2005, which was also a Harvard
15 study, showed a 60 percent increased risk
16 of ovarian cancer associated with talc use?
17 MS. BROWN: Misstates
18 the study and lacks foundation.
19 THE WITNESS: Again, I
20 wouldn't characterize my reaction
21 to it as surprise. I know there
22 were a lot of studies with a lot of
23 results.
24

<p style="text-align: right;">Page 868</p> <p>1 BY MR. TISI:</p> <p>2 Q. All right. So I just want to</p> <p>3 kind of be clear as to what was happening</p> <p>4 in the mid 1990s in fact when you were</p> <p>5 provided with information about whether or</p> <p>6 not additional studies needed to be done</p> <p>7 and so to be clear, just to wrap it up</p> <p>8 here, number one, there was a</p> <p>9 recommendation to do additional studies,</p> <p>10 right?</p> <p>11 MS. BROWN: Objection.</p> <p>12 Misstates the evidence.</p> <p>13 THE WITNESS: You showed</p> <p>14 me documents to that effect.</p> <p>15 BY MR. TISI:</p> <p>16 Q. Number two, Dr. Muscat from the</p> <p>17 American Health Foundation came to you and</p> <p>18 proposed a study that was described by your</p> <p>19 scientists as definitive, significant, and</p> <p>20 important?</p> <p>21 A. We talked about that document.</p> <p>22 MS. BROWN: Misstates</p> <p>23 the evidence.</p> <p>24</p>	<p style="text-align: right;">Page 870</p> <p>1 time.</p> <p>2 BY MR. TISI:</p> <p>3 Q. But we also know from the memo</p> <p>4 we looked at that the scientists at J&J</p> <p>5 recommended that the study be done, right?</p> <p>6 MS. BROWN: Objection.</p> <p>7 Misstates the evidence.</p> <p>8 THE WITNESS: I would</p> <p>9 just say that that document speaks</p> <p>10 for itself and there were certain</p> <p>11 people who seemed to recommend that</p> <p>12 they were in favor doing of doing</p> <p>13 the study.</p> <p>14 BY MR. TISI:</p> <p>15 Q. And we know that J&J, you've</p> <p>16 never seen the results of that study</p> <p>17 because it was never done, right?</p> <p>18 MS. BROWN: Lacks</p> <p>19 foundation.</p> <p>20 THE WITNESS: I don't</p> <p>21 know if it was done or not. I</p> <p>22 don't recall ever seeing any</p> <p>23 results.</p> <p>24</p>
<p style="text-align: right;">Page 869</p> <p>1 BY MR. TISI:</p> <p>2 Q. Number three, okay, that the</p> <p>3 other studies that Ms. Brown, assuming that</p> <p>4 I'm correct and it showed, they both,</p> <p>5 Purdie and Cramer, showed an increased</p> <p>6 risk, there were multiple studies that</p> <p>7 seemed to go in that direction of an</p> <p>8 increased risk, true?</p> <p>9 MS. BROWN: Misstates</p> <p>10 the evidence and lacks foundation.</p> <p>11 THE WITNESS: You know,</p> <p>12 I can't comment on what studies</p> <p>13 were showing what direction and you</p> <p>14 kind of, I think you're asking me</p> <p>15 what was -- you're questioning me</p> <p>16 about what else was going on in</p> <p>17 1995.</p> <p>18 MR. TISI: Okay.</p> <p>19 THE WITNESS: In any</p> <p>20 year, there's a lot going on and I</p> <p>21 don't want -- you know, and I can't</p> <p>22 recite of all of it to you, because</p> <p>23 I probably wasn't aware of all of</p> <p>24 what was going on in science at the</p>	<p style="text-align: right;">Page 871</p> <p>1 BY MR. TISI:</p> <p>2 Q. All right. So let's move on to</p> <p>3 the other things I actually asked you</p> <p>4 about. You recall that when I talked about</p> <p>5 the Harlow paper, I talked about the fact</p> <p>6 that this professor at Harvard suggested</p> <p>7 that women not use talc in their genital</p> <p>8 area out of an abundance of caution, right?</p> <p>9 A. I don't know the exact wording</p> <p>10 of what he recommended, but I accept what</p> <p>11 you say. I mean, we discussed this when it</p> <p>12 was all on the record --</p> <p>13 Q. Correct.</p> <p>14 A. -- and I had documents before</p> <p>15 me.</p> <p>16 Q. And this wasn't just, like, you</p> <p>17 know, some professor just thinking about</p> <p>18 this in his laboratory somewhere. There</p> <p>19 were other -- I brought to your attention</p> <p>20 that -- and you were aware of other people</p> <p>21 who were making the same recommendations at</p> <p>22 that time in the 1990s, right?</p> <p>23 A. You showed me --</p> <p>24 MS. BROWN: I'm just</p>

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1 objecting. This beyond the scope
2 now of the direct.
3 THE WITNESS: You showed
4 me, I'm not trying to be difficult,
5 you showed me certain documents
6 that there were recommendations
7 made. I remember words like
8 discouraged the use and that sort
9 of thing.
10 BY MR. TISI:
11 Q. Right. I mean, do you remember
12 the document where Dr. Wehner said to you,
13 you know, the prestigious University of
14 Berkeley Wellness Center was suggesting
15 that women not use it? Do you remember
16 that document?
17 A. I remember the memo where he
18 discussed that.
19 Q. And you remember the American
20 Cancer Society press release where they
21 said that women should not -- should use
22 cornstarch instead, he said, correct?
23 MS. BROWN: Objection.
24 Beyond the scope of the direct.

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1 THE WITNESS: That was a
2 press release, I think, in a
3 document that was interviewing
4 someone about the press releases
5 and I'm not sure who said what.
6 BY MR. TISI:
7 Q. All right. So let's move onto
8 the next thing. Now, Mr. Placitella will
9 be asking you some questions -- well, let
10 me rephrase the question. When counsel was
11 asking you questions about the totality of
12 the studies and what the studies showed and
13 what, you know, I think she mentioned
14 government agencies and all that kind of
15 stuff recommended. Do you remember those
16 questions?
17 A. Not the way you're describing
18 them.
19 Q. Okay. Are you aware that in
20 2021, the Canadian FDA looking at all of
21 the evidence in this case, cohort studies,
22 case control studies, all the mechanistic
23 studies, determined that talc was a likely
24 cause of ovarian cancer?

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1 MS. BROWN: Beyond the
2 scope. Lacks foundation.
3 THE WITNESS: I'm not
4 aware of anything like that.
5 BY MR. PLACITELLA:
6 Q. So if you were to really --
7 A. 2021, right?
8 Q. Yeah.
9 A. Okay.
10 Q. So if you were really to
11 evaluate, which I didn't ask you to do,
12 right, all the other studies that kind of
13 come out over time, right, you would want
14 to look at what the most recent evaluation
15 of those studies said, correct?
16 MS. BROWN: Beyond the
17 scope. Lacks foundation.
18 THE WITNESS: I wasn't
19 asked to evaluate studies. I don't
20 evaluate studies.
21 BY MR. TISI:
22 Q. Right, but what you were asked
23 is whether or not there was recommendations
24 made for Johnson & Johnson to do a study

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1 and that's what I asked you, right?
2 A. By you.
3 Q. Correct. All right. So last
4 thing I was going to ask you before I turn
5 it over to Mr. Placitella, and I know he's
6 got some questions to ask you about, you
7 were asked some questions about asbestos in
8 the talc and over many, many years and
9 testing documents and all of that stuff.
10 A. Uh-huh.
11 Q. But I want to get real kind of
12 like -- so that the jury really understands
13 what this testing program was over decades.
14 Do you have any understanding of -- now,
15 you would agree with me just intuitively
16 because of your involvement that hundreds
17 of thousands, if not millions, of bottles
18 of talc were sold in the United States over
19 the past 50 years?
20 MS. BROWN: Objection.
21 Foundation.
22 THE WITNESS: A lot of
23 talc has been sold. I don't know
24 how much.

<p style="text-align: right;">Page 876</p> <p>1 BY MR. TISI:</p> <p>2 Q. In terms of the testing</p> <p>3 protocol for talc, do you understand how</p> <p>4 much talc was actually tested for asbestos</p> <p>5 by Johnson & Johnson in order to conclude</p> <p>6 that it had no asbestos in it?</p> <p>7 MS. BROWN: That's been</p> <p>8 asked and answered and --</p> <p>9 THE WITNESS: I don't</p> <p>10 know the specific amount.</p> <p>11 BY MR. TISI:</p> <p>12 Q. And would it surprise you,</p> <p>13 regardless of how many papers there are, no</p> <p>14 matter how many slips of paper that were</p> <p>15 placed before you even by Mr. Placitella,</p> <p>16 that the actual amount of talc that was</p> <p>17 tested in 50 years would fit in this cup?</p> <p>18 MS. BROWN: That is</p> <p>19 demonstrably false. You are</p> <p>20 misstating the evidence. And I</p> <p>21 object as lacking foundation and</p> <p>22 absolutely incorrect.</p> <p>23 BY MR. TISI:</p> <p>24 Q. Would it surprise you?</p>	<p style="text-align: right;">Page 878</p> <p>1 foundation and calls for</p> <p>2 speculation.</p> <p>3 THE WITNESS: No, and,</p> <p>4 you know, what we told the courts</p> <p>5 in the documents is, of course, the</p> <p>6 talc is asbestos free and that was</p> <p>7 based on the testing that the</p> <p>8 company had done over all the years</p> <p>9 and, you know, our information from</p> <p>10 the company's scientists.</p> <p>11 BY MR. TISI:</p> <p>12 Q. Right. So if I take this</p> <p>13 napkin and put this napkin on this table</p> <p>14 here and say the amount of paper underneath</p> <p>15 this napkin, okay, is zero, okay. But I</p> <p>16 don't look at all the other information on</p> <p>17 this table, you would agree there's a lot</p> <p>18 of paper on this table, on this square</p> <p>19 table, right?</p> <p>20 A. Is that a trick question?</p> <p>21 Q. No, it's not.</p> <p>22 MS. BROWN: It sounds</p> <p>23 like it.</p> <p>24</p>
<p style="text-align: right;">Page 877</p> <p>1 A. I don't characterize my</p> <p>2 reaction as surprise. You had said in your</p> <p>3 question regardless of all the testing,</p> <p>4 well, I can't disregard all the testing.</p> <p>5 Q. All the testing of the talc</p> <p>6 that would fit in this cup.</p> <p>7 MS. BROWN: Again,</p> <p>8 misstates the testing.</p> <p>9 THE WITNESS: I don't</p> <p>10 know how much they tested in terms</p> <p>11 of all the testing they've done</p> <p>12 over the years, but it was</p> <p>13 continuous and it was regular.</p> <p>14 BY MR. TISI:</p> <p>15 Q. All right. And when you made</p> <p>16 the representations in the pleadings that</p> <p>17 you made, did you ever suggest to any</p> <p>18 court, litigant, anybody that, you know,</p> <p>19 when we made the suggestion that talc was</p> <p>20 asbestos free that was sold over decades,</p> <p>21 did you ever say to them, but we only</p> <p>22 tested a small amount?</p> <p>23 MS. BROWN: Well, that's</p> <p>24 misstating the record and lacks</p>	<p style="text-align: right;">Page 879</p> <p>1 BY MR. TISI:</p> <p>2 Q. You would agree there's a lot</p> <p>3 of paper on this square table, right?</p> <p>4 MS. BROWN: This table</p> <p>5 is not a square.</p> <p>6 THE WITNESS: Yes, there</p> <p>7 is.</p> <p>8 BY MR. TISI:</p> <p>9 Q. But if I say, you know, I'm</p> <p>10 going to test only this portion of this</p> <p>11 table, would there be any paper on this</p> <p>12 table, on this sample?</p> <p>13 MS. BROWN: I object to</p> <p>14 this hypothetical as vague and</p> <p>15 lacking foundation.</p> <p>16 THE WITNESS: I can't</p> <p>17 answer your question.</p> <p>18 BY MR. TISI:</p> <p>19 Q. You can't answer that question?</p> <p>20 A. No, I can't.</p> <p>21 MR. TISI: Okay. I</p> <p>22 don't have any questions. I think</p> <p>23 Mr. Placitella may have some.</p> <p>24</p>

<p style="text-align: right;">Page 880</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. How are you doing? Are you</p> <p>3 hanging in there?</p> <p>4 A. So far.</p> <p>5 Q. Okay.</p> <p>6 MR. TISI: I told you I</p> <p>7 would be quick. Pretty good,</p> <p>8 right?</p> <p>9 MR. PLACITELLA: Alli,</p> <p>10 can I have your exhibits?</p> <p>11 MS. BROWN: Which ones?</p> <p>12 MR. PLACITELLA: The</p> <p>13 ones you just had marked and went</p> <p>14 over with him.</p> <p>15 MS. BROWN: The court</p> <p>16 reporter has what I have marked.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. While he's doing that, let me</p> <p>19 just ask some basic questions. I'm going</p> <p>20 to try to be as efficient as I can. I want</p> <p>21 to see if maybe you just made some mistakes</p> <p>22 in some of the answers you gave to</p> <p>23 Ms. Brown. By the way, to start off, I</p> <p>24 never served you with a subpoena at your</p>	<p style="text-align: right;">Page 882</p> <p>1 witnesses were being asked</p> <p>2 questions.</p> <p>3 BY MR. PLACITELLA:</p> <p>4 Q. Okay.</p> <p>5 A. Regardless of whether it was</p> <p>6 talc, pharmaceutical, or medical devices.</p> <p>7 Can't do all of it.</p> <p>8 Q. I understand.</p> <p>9 A. But some of them I did attend.</p> <p>10 Q. I understand. And Ms. Brown</p> <p>11 asked you some questions about, you know,</p> <p>12 where you don't know what was turned over</p> <p>13 in a particular case, because you don't</p> <p>14 know what requests. Do you remember those?</p> <p>15 A. I recall my testimony on the</p> <p>16 subject.</p> <p>17 Q. Okay. All right. But</p> <p>18 regardless of what was asked to you and</p> <p>19 what was turned over, when the affidavits</p> <p>20 saying that there was no evidence</p> <p>21 whatsoever were filed in courts and given</p> <p>22 to judges, you had all the evidence in your</p> <p>23 possession that's in these books here</p> <p>24 today, didn't you?</p>
<p style="text-align: right;">Page 881</p> <p>1 house, did I?</p> <p>2 A. I don't know which firm did it,</p> <p>3 Mr. Placitella. I don't think it was you</p> <p>4 though.</p> <p>5 Q. No. Okay. And that was in a</p> <p>6 totally different kind of case, wasn't it?</p> <p>7 A. It was related to these</p> <p>8 depositions and these cases.</p> <p>9 Q. Okay. And you, in your</p> <p>10 testimony, talked about the proportionate</p> <p>11 time that you spent in talc cases. Do you</p> <p>12 recall that?</p> <p>13 A. I do.</p> <p>14 Q. But the talc cases were so</p> <p>15 important to you with all the things you</p> <p>16 had to do, and I'm sure there were a lot,</p> <p>17 that you actually appeared at depositions</p> <p>18 that you thought were important to be at,</p> <p>19 correct?</p> <p>20 MS. BROWN: Objection,</p> <p>21 foundation.</p> <p>22 THE WITNESS: Yes, I</p> <p>23 did. I generally tried to be at</p> <p>24 depositions where the company</p>	<p style="text-align: right;">Page 883</p> <p>1 A. The company would have had</p> <p>2 these, I'm sure.</p> <p>3 Q. Okay. And why file affidavits</p> <p>4 saying there's absolutely no evidence when</p> <p>5 the company knows that there's evidence</p> <p>6 sitting in their files?</p> <p>7 MS. BROWN: Okay. Hold</p> <p>8 on. I object to that as misstating</p> <p>9 the evidence and if you are asking</p> <p>10 him for his legal strategy behind</p> <p>11 filing affidavits in litigation,</p> <p>12 I'll object and instruct.</p> <p>13 JUDGE SCHNEIDER: Do you</p> <p>14 want a ruling?</p> <p>15 MR. PLACITELLA: Yes,</p> <p>16 Your Honor.</p> <p>17 JUDGE SCHNEIDER:</p> <p>18 Objection overruled. It doesn't</p> <p>19 ask for work product.</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. So you had the evidence in your</p> <p>22 possession and I'm not saying that you knew</p> <p>23 it was there --</p> <p>24 A. What evidence?</p>

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1 Q. All the testing evidence, the
2 McCrone evidence, the Colorado School of
3 Mine evidence, the Pooley studies --
4 A. I'm sorry.
5 Q. -- if you had all that --
6 A. The documents were there in the
7 company?
8 Q. Then why would the company ask
9 you to file affidavits saying there was no
10 evidence?
11 MS. BROWN: I object.
12 That misstates the evidence.
13 THE WITNESS: The
14 company didn't ask me to file
15 affidavits. That's a legal
16 decision about what we should do
17 with the lawsuit.
18 BY MR. PLACITELLA:
19 Q. Okay. And remember I started
20 out the deposition and I tried to be
21 careful and very respectful to you and I
22 said that I know you recognize your duty as
23 a lawyer and I think you do recognize that.
24 And I said to you that the representations

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1 that you could make in litigation are only
2 as good as the information that's provided
3 to you. Do you recall that?
4 A. I recall that line of
5 questioning, yes.
6 Q. So I want to go over quickly
7 some of Ms. Brown's exhibits. Can you give
8 me the Elmo, please? So here is this D-1,
9 which was this affidavit from Mr. Denton.
10 Do you see that?
11 A. I do.
12 Q. Okay. Did you ever see that
13 before Ms. Brown showed it to you?
14 A. No.
15 Q. Okay. So and she read to you
16 or she had you read the stuff about "I
17 understand some plaintiffs' lawyers." Do
18 you see that?
19 A. I do.
20 Q. And it suggested that what was
21 destroyed were TEM grids. Do you see that?
22 A. Yes.
23 Q. Did I suggest that to you, sir?
24 MS. BROWN: Objection,

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1 misstates the evidence and the
2 questioning on --
3 BY MR. PLACITELLA:
4 Q. In the context of the document
5 that said the mine documents were
6 destroyed --
7 MS. BROWN: Objection.
8 BY MR. PLACITELLA:
9 Q. Did I suggest that to you?
10 MS. BROWN: Same
11 objection.
12 THE WITNESS: I believe,
13 Mr. Placitella, you said that --
14 you used terms like all the talc
15 documents were destroyed, all that
16 testing, all the backup documents
17 were destroyed.
18 MR. PLACITELLA: No,
19 sorry --
20 MS. BROWN: Wait, let
21 him finish, Chris.
22 MR. PLACITELLA: Well, I
23 think you're mistaken.
24 THE WITNESS: I might

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1 be.
2 MS. BROWN: Let him
3 finish.
4 THE WITNESS: I might
5 be.
6 BY MR. PLACITELLA:
7 Q. Okay. The document that we
8 talked about was the document, and I can go
9 back to it if you want --
10 A. I think I recall it.
11 Q. Was the Trip report?
12 A. With the paragraph at the
13 bottom.
14 Q. Right, right. And it said that
15 the documents were destroyed. And in that
16 context, I never said -- suggested to you
17 exactly what documents were destroyed, did
18 I?
19 MS. BROWN: Misstates
20 the testimony.
21 THE WITNESS: I thought
22 you phrased it at one point as all
23 the documents.
24

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1 BY MR. PLACITELLA:
2 Q. And let me -- this document
3 that Ms. Brown showed you from the CTFA --
4 A. Yes, yes.
5 Q. -- 2002, have you ever seen
6 that before?
7 A. Can you just move it over, Mr.
8 Placitella, just a little bit? I don't
9 recall seeing it.
10 Q. Okay. And do you remember that
11 she highlighted the Blount reference,
12 right? Do you see that?
13 A. There's two Blount references.
14 Q. Yes.
15 A. And one is the '83 article and
16 one in the '91 article and she highlighted
17 the '83 article.
18 Q. Right. Well, they're both
19 there, right?
20 A. Yes.
21 Q. And we discussed that that was
22 no secret, right, that she did testing,
23 right?
24 A. That's right.

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1 Q. Right. But nothing in the CTFA
2 documents says that Alice Blount found
3 asbestos in Johnson's Baby Powder, does it?
4 MS. BROWN: Assumes
5 facts. Misstates the evidence.
6 THE WITNESS: Nothing in
7 that document, the cover letter
8 says that.
9 BY MR. PLACITELLA:
10 Q. Okay. The cover letter --
11 A. I'm referring to this document
12 you're showing me now.
13 Q. Yeah. It says that Alice
14 Blount found asbestos in Johnson's Baby
15 Powder?
16 A. No, I said it doesn't say that.
17 Q. Okay. Now, can you go to
18 Exhibit 488? Actually, go to 414 first.
19 Okay.
20 A. I think I'm having a problem, I
21 go from --
22 Q. Well, why don't I just show it
23 to you --
24 A. Okay. Sure?

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1 Q. -- because I know it's getting
2 late?
3 A. Right, that's fine.
4 Q. 414 --
5 A. Probably looking at the wrong
6 thing.
7 Q. -- is a spreadsheet that was
8 created at Dr. Hopkins' deposition in this
9 very case. Do you see that?
10 MS. BROWN: Lacks
11 foundation.
12 THE WITNESS: I see what
13 you have up there, sure.
14 - - - - -
15 (Spreadsheet marked
16 O'Shaughnessy Exhibit 414 for
17 identification.)
18 - - - - -
19 BY MR. PLACITELLA:
20 Q. Now, I'm just going to show you
21 for a second, 488. It's the same
22 spreadsheet, but it's a little easier to
23 read the headings. Okay?
24 MS. BROWN: Also, lacks

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1 foundation. Also lacks foundation.
2 - - - - -
3 (Spreadsheet marked
4 O'Shaughnessy Exhibit 488 for
5 identification.)
6 - - - - -
7 BY MR. PLACITELLA:
8 Q. Okay. Can you see where --
9 what I did was, with Dr. Hopkins' help,
10 along with the Johnson & Johnson lawyer, we
11 looked at every record, we looked at the
12 tests, the date, who authored it, the
13 method they used, what the test showed, and
14 Dr. Hopkins was actually able to put his
15 own comments in. Do you see that?
16 A. I do. I'm not familiar with
17 this document. Are you saying it was
18 created by a Johnson & Johnson lawyer?
19 Q. It was created at the
20 deposition of Dr. Hopkins in this case.
21 A. By you?
22 MS. BROWN: Lacks
23 foundation.
24 THE WITNESS: By you?

<p style="text-align: right;">Page 892</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. Myself and Dr. Hopkins</p> <p>3 together, yes.</p> <p>4 MS. BROWN: Lacks</p> <p>5 foundation.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. Okay. So all I'm saying, and</p> <p>8 you see the last part, the last column says</p> <p>9 "satisfies Johnson & Johnson asbestos</p> <p>10 deposition." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So that was ultimately</p> <p>13 marked and I'll make sure it's in the</p> <p>14 record, Hopkins 28. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Okay. When Ms. Brown showed</p> <p>17 you documents from Dr. Pooley from 1972,</p> <p>18 did she ever show you this spreadsheet that</p> <p>19 was created in this very case where Dr.</p> <p>20 Hopkins went through all the tests in the</p> <p>21 first big test book?</p> <p>22 MS. BROWN: I object.</p> <p>23 Lacks foundation. Misstates the</p> <p>24 evidence.</p>	<p style="text-align: right;">Page 894</p> <p>1 have it. It says cosmetics on the</p> <p>2 front of it.</p> <p>3 - - - - -</p> <p>4 (Cosmetics Document marked</p> <p>5 O'Shaughnessy Exhibit J&J 4 for</p> <p>6 identification.)</p> <p>7 - - - - -</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. Yes, it says cosmetics on the</p> <p>10 front of it. And if you go to 4.2, do you</p> <p>11 see where it says Eastern Magnesia Talc, a</p> <p>12 Johnson & Johnson company?</p> <p>13 A. Yeah.</p> <p>14 Q. And do you see where it says</p> <p>15 the cosmetic industry?</p> <p>16 A. Yes.</p> <p>17 Q. Do you see down below, the</p> <p>18 Emtal talc that was used in the cosmetic</p> <p>19 industry from the Vermont plants that came</p> <p>20 out of the Johnson, Vermont, mine?</p> <p>21 MS. BROWN: Objection.</p> <p>22 Misstates the document.</p> <p>23 THE WITNESS: Are you</p> <p>24 referring to subsection D?</p>
<p style="text-align: right;">Page 893</p> <p>1 THE WITNESS: I don't --</p> <p>2 I'm not familiar with this document</p> <p>3 and what it contains. And I</p> <p>4 haven't seen it until now.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. Okay. That's fair. Now, last</p> <p>7 set of questions. You testified, I want to</p> <p>8 see if you were mistaken, you testified</p> <p>9 that the Johnson mine only sold industrial</p> <p>10 talc. Do you recall that?</p> <p>11 A. Yes.</p> <p>12 MS. BROWN: Objection.</p> <p>13 Misstates the testimony.</p> <p>14 BY MR. PLACITELLA:</p> <p>15 Q. Okay. Can you go to Exhibit 4,</p> <p>16 J&J 4, in book one?</p> <p>17 MS. BROWN: Of</p> <p>18 testimony?</p> <p>19 MR. PLACITELLA: No.</p> <p>20 The JOS booklet.</p> <p>21 THE WITNESS: I'm sorry,</p> <p>22 what was the number?</p> <p>23 MR. PLACITELLA: Four.</p> <p>24 THE WITNESS: I think I</p>	<p style="text-align: right;">Page 895</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. Yes, sir.</p> <p>3 A. It says "The following grades,</p> <p>4 FOB, the Vermont plants, are sold in the</p> <p>5 cosmetic industry." And it has plant</p> <p>6 Johnson, Vermont. West Windsor, Vermont.</p> <p>7 Q. Right. And if you go to</p> <p>8 page 4.4, do you see where it says that</p> <p>9 "EMTCO," which is Eastern Magnesia Talc</p> <p>10 Company, "working to replace Johnson EMTals</p> <p>11 towels with West Windsor EMTals --"</p> <p>12 A. Can you --</p> <p>13 Q. Yes, number five, all the way</p> <p>14 down at the bottom.</p> <p>15 A. I see the bottom, yes.</p> <p>16 Q. "When and if Johnson cosmetic</p> <p>17 grades are eliminated due to arsenic</p> <p>18 content." Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Now, you were present at</p> <p>21 Mr. Miller's deposition when he testified</p> <p>22 in your presence that the Johnson mine</p> <p>23 produced cosmetic talc. Do you recall</p> <p>24 that?</p>

<p style="text-align: right;">Page 896</p> <p>1 MS. BROWN: Objection. 2 Lacks foundation. Misstates the 3 evidence. 4 BY MR. PLACITELLA: 5 Q. Okay. Can you go to 270 in the 6 transcript folder? 7 A. Oh, transcript, all right. 8 Q. Yeah. 9 A. 270. Got it. 10 Q. And if you look at the second, 11 270.3, it says for Roger Miller, John 12 O'Shaughnessy, correct? 13 A. Yes. 14 ----- 15 (Deposition of Roger N. Miller 16 taken 6/12/91 marked O'Shaughnessy 17 Exhibit 270 for identification.) 18 ----- 19 BY MR. PLACITELLA: 20 Q. Okay. And if you go to 270.45 21 and I'll give you the right page, because I 22 know that's how you like to do, it's 23 actually page 42 of the deposition. 24 A. Yup.</p>	<p style="text-align: right;">Page 898</p> <p>1 crystal size between the Hammondsville and 2 Johnson mine." Do you see that? 3 A. Yes. 4 MS. BROWN: Objection. 5 Lacks foundation. 6 BY MR. PLACITELLA: 7 Q. So testing that was done at the 8 Johnson mine would clearly be evidential of 9 what would be the Hammondsville mine, true? 10 MS. BROWN: I object. 11 It misstates the evidence and lacks 12 foundation. 13 THE WITNESS: I'm not 14 qualified to say. They're two 15 different mines, so -- 16 BY MR. PLACITELLA: 17 Q. But he said they're the same, 18 the ore bodies -- 19 MS. BROWN: No. 20 MR. PLACITELLA: -- are 21 essentially the same? 22 THE WITNESS: He said 23 the ore bodies are, that's his 24 testimony.</p>
<p style="text-align: right;">Page 897</p> <p>1 Q. It says "And the Johnson mine 2 and mill did not or did produce cosmetics?" 3 MS. BROWN: What page 4 are you on? 5 MR. PLACITELLA: Page 6 42. 7 THE WITNESS: I see it. 8 BY MR. PLACITELLA: 9 Q. And the answer was, in your 10 presence, "They produced a very minor 11 quantity of cosmetic materials." Do you 12 see that? 13 A. I do. 14 Q. And he also testified that, if 15 you go to page 54 of the deposition, he was 16 asked a question "Was the purity similar 17 between the Johnson mine and the 18 Hammondsville mine and the Waterbury mine 19 of the talc?" Do you see that? 20 A. Was the purity similar 21 between -- yes, I see that. 22 Q. And he says "I don't know 23 anything about Waterbury. The ore bodies 24 were essentially the same except for</p>	<p style="text-align: right;">Page 899</p> <p>1 BY THE WITNESS: 2 Q. Right, so if they found 3 asbestos in the Johnson mine, it's a 4 reasonable indication that there was 5 asbestos in the Hammondsville mine? 6 MS. BROWN: I object. 7 It misstates the evidence, calls 8 for speculation, lacks foundation. 9 THE WITNESS: No, not at 10 all. 11 BY MR. PLACITELLA: 12 Q. Okay. And then lastly, go to 13 J&J 472. 14 A. In the transcript? 15 Q. No, I'm sorry, in the regular 16 book. This is the last, this is the last 17 thing you'll have to fight with here? 18 A. Excuse me. 19 Q. This is the last document 20 you'll have to fight to find. 21 A. Oh, okay. I'm sorry, what 22 binder is it? 23 Q. It's book two. 24 A. Okay. Got it, book two.</p>

Page 900

1 Q. Exhibit 472.
 2 A. Got it.
 3 -----
 4 (Photograph marked
 5 O'Shaughnessy Exhibit 472 for
 6 identification.)
 7 -----
 8 BY MR. PLACITELLA:
 9 Q. Okay. And this is a photo
 10 taken directly from the Johnson Mine Museum
 11 in Johnson, Vermont.
 12 MS. BROWN: I object,
 13 lacks foundation.
 14 BY MR. PLACITELLA:
 15 Q. I'm going to blow it up. Do
 16 you see here where it shows all the
 17 different products of Eastern Magnesia Talc
 18 Company?
 19 A. I see that.
 20 Q. It has rubber products, paint
 21 products, plastic products. Do you see
 22 that?
 23 A. Yes.
 24 Q. Okay.

Page 901

1 A. I can't --
 2 Q. Okay. Well, this is the one I
 3 want to show you. See the bottle of
 4 Johnson's Baby Powder on the bottom?
 5 A. Yeah.
 6 Q. Okay.
 7 A. Yeah. It says Johnson.
 8 Q. Do you want me to do it again?
 9 A. No, I can't see what -- it says
 10 Johnson's Baby Powder, I don't know what it
 11 is in terms of a container, but looks
 12 like --
 13 MS. BROWN: I object as
 14 lacking foundation.
 15 BY MR. PLACITELLA:
 16 Q. Well, you recognize that has a
 17 bottle of Johnson's Baby Powder, don't you?
 18 A. That's what it says.
 19 Q. Okay.
 20 A. It looks very old.
 21 Q. And at the end of the day,
 22 Mr. Ashton never told you that there were
 23 testing and testimony from the Westfall
 24 case showing that there was asbestos in the

Page 902

1 Johnson mine, correct?
 2 MS. BROWN: That
 3 misstates the testimony and lacks
 4 foundation.
 5 THE WITNESS: I don't
 6 know what you mean by at the end of
 7 the day, do you mean today? Are we
 8 at the end of the day?
 9 BY MR. PLACITELLA:
 10 Q. I'm hoping.
 11 A. I don't recall my discussions
 12 with Mr. Ashton specifically, but I don't
 13 recall those transcripts at all or that
 14 testimony at all. I never saw them, I
 15 believe.
 16 Q. And to be totally fair to you,
 17 it would have been good if they were shared
 18 with you, don't you think?
 19 MS. BROWN:
 20 Argumentative. Lacks foundation.
 21 THE WITNESS: No, I
 22 wouldn't necessarily say that.
 23 MR. PLACITELLA: Okay.
 24 Well, thank you for your patience

Page 903

1 with me and I appreciate your time.
 2 THE WITNESS: Thank you
 3 both.
 4 BY MS. BROWN:
 5 Q. Just one question. Can I do it
 6 from here? Mr. O'Shaughnessy, based on
 7 everything you know about where Johnson &
 8 Johnson sourced its talc for use in baby
 9 powder, did it get talc for baby powder
 10 from the Johnson mine?
 11 A. Not to my knowledge, no.
 12 MS. BROWN: Thanks. No
 13 more questions.
 14 BY MR. PLACITELLA:
 15 Q. You weren't alive in 1967 doing
 16 this work when they were doing that, were
 17 you?
 18 MS. BROWN: Lacks
 19 foundation.
 20 BY MR. PLACITELLA:
 21 Q. Well, let me rephrase the
 22 question. You weren't working for Johnson
 23 & Johnson when they were pulling cosmetic
 24 talc out of the Johnson mine in 1967, were

<p style="text-align: right;">Page 904</p> <p>1 you?</p> <p>2 MS. BROWN: Misstates</p> <p>3 the evidence and lacks foundation.</p> <p>4 THE WITNESS: I was not</p> <p>5 working for the company in 1967.</p> <p>6 MR. PLACITELLA: Thank</p> <p>7 you, sir.</p> <p>8 MS. BROWN: Going off.</p> <p>9 THE VIDEOGRAPHER: Okay.</p> <p>10 That concludes today's deposition.</p> <p>11 The time is 6:37 p.m.</p> <p>12 JUDGE SCHNEIDER: So the</p> <p>13 question I want to raise is do you</p> <p>14 want to close the deposition or</p> <p>15 just keep it open just for that one</p> <p>16 issue regarding the one document?</p> <p>17 MR. TISI: Well, there</p> <p>18 is a question and I'm not prepared</p> <p>19 to really address it, but I know</p> <p>20 that there are many privileged</p> <p>21 issues that are still pending</p> <p>22 before Your Honor in terms of, you</p> <p>23 know, the issues that you heard</p> <p>24 argument on a couple of weeks ago.</p>	<p style="text-align: right;">Page 906</p> <p>1 agreement and perhaps other issues</p> <p>2 and I don't know what counsel's</p> <p>3 preference is. I know when I'm</p> <p>4 going to get in my car, I'm going</p> <p>5 to get four phone calls to say why</p> <p>6 did you do that.</p> <p>7 JUDGE SCHNEIDER: While</p> <p>8 we're here, it seems to me we ought</p> <p>9 to have briefing and hopefully</p> <p>10 supporting affidavits on the one</p> <p>11 document that came up today. I</p> <p>12 think probably Johnson & Johnson</p> <p>13 should go first. You tell me how</p> <p>14 much time you want or need,</p> <p>15 whatever is reasonable is perfectly</p> <p>16 fine with me and we'll get a</p> <p>17 response from --</p> <p>18 MR. TISI: It's fine</p> <p>19 with us. Whatever time you think</p> <p>20 you need with that.</p> <p>21 JUDGE SCHNEIDER: Do you</p> <p>22 just need the time to do the due</p> <p>23 diligence?</p> <p>24 MR. BERNARDO: I would</p>
<p style="text-align: right;">Page 905</p> <p>1 And so, you know, when we say on</p> <p>2 the one document, I just want to</p> <p>3 make -- I haven't really, I've only</p> <p>4 been tangentially involved in that</p> <p>5 issue. I don't know where we stand</p> <p>6 with all of that, but with respect</p> <p>7 to any privileged document that is</p> <p>8 still under review and in that</p> <p>9 process, I think we would keep it</p> <p>10 open for those purposes.</p> <p>11 JUDGE SCHNEIDER: The</p> <p>12 reason I raised it, I'm not sure of</p> <p>13 the legal niceties, if you formally</p> <p>14 close the deposition or if you say</p> <p>15 we're reserving depending upon the</p> <p>16 rulings of the privileged document.</p> <p>17 I just don't want anybody to be</p> <p>18 prejudiced.</p> <p>19 MR. PLACITELLA: It</p> <p>20 feels like to me, it feels like,</p> <p>21 not having any research in front of</p> <p>22 me, it feels like to me that we</p> <p>23 should close the deposition subject</p> <p>24 to that one issue with the</p>	<p style="text-align: right;">Page 907</p> <p>1 rather talk to the people who are</p> <p>2 actually going to put the brief</p> <p>3 together.</p> <p>4 JUDGE SCHNEIDER: You</p> <p>5 probably -- I mean, I think the key</p> <p>6 issue is can you track down whether</p> <p>7 or not it was produced by J&J.</p> <p>8 MS. BROWN: Yeah, we</p> <p>9 will.</p> <p>10 JUDGE SCHNEIDER: That's</p> <p>11 the key issue.</p> <p>12 MR. PLACITELLA: Can you</p> <p>13 guys go through whatever binders</p> <p>14 you have and pull that document</p> <p>15 out?</p> <p>16 MS. BROWN: I took my</p> <p>17 version out of here and it's in our</p> <p>18 breakout room.</p> <p>19 MR. PLACITELLA: But</p> <p>20 there's two sets.</p> <p>21 MS. BROWN: Okay.</p> <p>22 MR. BERNARDO: Yeah, and</p> <p>23 just a spoiler alert, I just edited</p> <p>24 a clawback letter just to be formal</p>

<div> <div>Page 908</div> <div> <p>1 about it that I'll send you all and</p> <p>2 send to Jerry Block, just so we're</p> <p>3 doing our due diligence.</p> <p>4 MR. PLACITELLA: You're</p> <p>5 clawing at me?</p> <p>6 MR. BERNARDO: Yes. And</p> <p>7 I'll send one, because Judge</p> <p>8 Schneider will yell at me if I</p> <p>9 haven't taken appropriate steps to</p> <p>10 formally claw it back.</p> <p>11 JUDGE SCHNEIDER: Would</p> <p>12 you just agree with Plaintiffs on a</p> <p>13 briefing schedule? Whatever you</p> <p>14 agree to is fine with me. Whatever</p> <p>15 you think is reasonable.</p> <p>16 MR. PLACITELLA: Thank</p> <p>17 you.</p> <p>18 - - - - -</p> <p>19 (Whereupon, the deposition was</p> <p>20 concluded at 6:41 p.m.)</p> <p>21 - - - - -</p> <p>22</p> <p>23</p> <p>24</p> </div> </div>	<div> <div>Page 910</div> <div> <p>1 INSTRUCTIONS TO WITNESS</p> <p>2</p> <p>3 Please read your deposition over carefully</p> <p>4 and make any necessary corrections.</p> <p>5 You should state the reason in the appropriate</p> <p>6 space on the errata sheet for any corrections</p> <p>7 that are made.</p> <p>8 After doing so, please sign the errata</p> <p>9 sheet and date it.</p> <p>10 You are signing same subject to the</p> <p>11 changes you have noted on the errata sheet,</p> <p>12 which will be attached to your deposition.</p> <p>13 It is imperative that you return the</p> <p>14 original errata sheet to the deposing attorney</p> <p>15 within thirty (30) days of receipt of the deposition</p> <p>16 transcript by you. If you fail to do so, the</p> <p>17 deposition transcript may be deemed to be accurate</p> <p>18 and may be used in court.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> </div> </div>
<div> <div>Page 909</div> <div> <p>1 CERTIFICATION</p> <p>2</p> <p>3</p> <p>4 I HEREBY CERTIFY that the proceedings and</p> <p>5 evidence are contained fully and accurately in the</p> <p>6 stenographic notes taken by me upon the foregoing</p> <p>7 matter on June 30, 2021, and that this is a correct</p> <p>8 transcript of same.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Robin L. Clark</p> <p>16 Registered Professional Reporter</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 (The foregoing certification of this</p> <p>22 transcript does not apply to any reproduction of the</p> <p>23 same by any means unless under the direct control</p> <p>24 and/or supervision of the certifying reporter.)</p> </div> </div>	<div> <div>Page 911</div> <div> <p>1</p> <p>2</p> <p>3</p> <p>4 PAGE LINE CHANGE</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> </div> </div>

ACKNOWLEDGMENT OF DEPONENT

I, JOHN C. O'SHAUGHNESSY, do hereby
certify that I have read the foregoing pages
and that the same is a correct
transcription of the answers given by me to
the questions therein propounded, except for
the corrections or changes in form or
substance, if any, noted in the attached
Errata Sheet.

DATE SIGNATURE

Subscribed and sworn to before me this
day of ,
2021.

My commission expires:

Notary Public

Exhibit 184

George F.Y.I.

Johnson-Johnson

DOMESTIC OPERATING COMPANY

NEW BRUNSWICK, N. J.

June 10, 1977

Dear Task Force Member:

We are sending to you, under separate cover, Set of coded talc samples for the CTFA round robin retest. It is hoped that through this partial retesting we can achieve our objectives as discussed at our recent meeting.

- A. To verify that CTFA Method J4-1 is accurate and reliable.
- B. To determine whether or not any 1976 production major commercial talc products contain asbestiform amphibole contaminants.

Each set of 4 samples has been selected at RANDOM from:

- 1 standard sample prepared by spiking talc with an amphibole mineral, and
- 3 products which were indicated by several labs. in our initial round robin to have failed the Method.

This means that your set might include any combination of the above four talc samples. Each vial should contain sufficient sample to prepare at least three (3) pellets, if necessary. The smudges on the sides and bottom of each vial are again caused by the masking perfume.

It is imperative that we adhere strictly to the CTFA Method as written if we are to obtain a valid inter-laboratory comparison of results. For this purpose, please:

- 1. In reporting round robin results, consider only those samples showing x-ray diffraction peaks of intensity equal to or greater than that obtained for your own standard talc spiked with 0.5% of the CTFA tremolite.

CTFA Round Robin

-2-

June 10, 1977

2. Substitute Method J4-1, Part II - Tentative Revision (attached) for the Optical Microscopy and Dispersion-Staining Method.
3. Consider an amphibole particle to be a fiber only if it meets the shape, size and aspect ratio criteria of the OSHA Field Memorandum, given in Method J4-1, p. 9. Note: Item 3 of the OSHA fiber definition has been corrected to read:

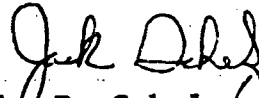
"3. The maximum length of a fiber to be counted is 200 microns."

It may be necessary to accurately measure certain particles to determine if they conform to this fiber definition.

In addition to round robin results, please report to me your results from Method J4-1 (Parts I and II) for those samples showing statistically significant x-ray diffraction amphibole peaks of intensity less than the 0.5% standard.

We have set August 1, 1977 as deadline for receipt of your round robin results. We would also appreciate your comments and suggestions concerning the Part II Tentative Revision. Please contact me (201/524-5518) should you have problems or questions. Thank you for your participation.

Sincerely,



John P. Schelz, Chairman
CTFA Task Force on
Round Robin Testing of
Consumer Talcum Products
Central Analytical Laboratories
Johnson & Johnson Research Center
New Brunswick, N.J. 08903

JPS/gm

cc: Dr. N. F. Estrin
Vice President-Science, CTFA
Mr. G. Sandland
Bristol-Myers Products

RECEIVED

JUN 14 1977

GEORGE LE

Exhibit 185

Johnson & Johnson

George Lee
file Talc Subcommittee
- CTFA

C O N F I D E N T I A L

DOMESTIC OPERATING COMPANY

NEW BRUNSWICK, N. J.

March 1, 1978

Mr. Charles Haynes
The Cosmetic, Toiletry and Fragrance Association, Inc.
1133 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Haynes:

I am enclosing a table which breaks the code for the recently completed CTFA Task Force on Round Robin Testing of Consumer Talcum Products for Asbestiform Amphibole Minerals. The names, addresses, and phone numbers are also included for those industrial participants whose products were involved.

In accordance with your discussions with Norm Estrin and George Sandland, Chairman CTFA Talc Subcommittee, we would request your assistance in the dissemination of these round robin results as follows:

1. Please contact me (201/524/5518) upon receipt of this letter so that I may destroy the only other copy of this table, which is in my possession.
2. Contact each of the industrial participants to inform them of the round robin results for their product only, as well as the actual lot tested. Please emphasize that no talcum product failed CTFA Method J4-1, Parts I and II; i.e., no product was found to contain asbestiform amphibole at a level equal to or greater than 0.5% by weight. "Nonasbestiform Amphibole Detected" means that the product was found by CTFA Method J4-1 to contain only nonasbestiform amphibole at a level equal to approximately 0.5% or greater.

RECEIVED

MAR 5 1978

GEORGE LEE

-2-

March 1, 1978

3. Destroy your copy of the table.

Your participation in this final important phase of the round robin is appreciated. Thank you very much.

Sincerely,



John P. Schelz, Chairman
CTFA Task Force on
Round Robin Testing of
Consumer Talcum Products

JS/gm
Enclosure

cc (without table): Dr. N. F. Estrin
Vice President-Science, CTFA
Mr. G. Sandland
Bristol-Myers Products

Exhibit 186

1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

2

- - - - -

3

VICKIE FORREST, et al.,

4

Plaintiffs,

5

vs.

Cause No.

1522-CC0419-02

6

JOHNSON & JOHNSON, et al.

7

Defendants.

8

- - - - -

9

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

10

- - - - -

11

IN RE: JOHNSON & JOHNSON

MDL NO:

12

TALCUM POWDER PRODUCTS

16-2738 (FLW)(LGH)

MARKETING, SALES PRACTICES,

13

AND PRODUCTS LIABILITY

LITIGATION

14

- - - - -

15

Wednesday, June 30, 2021

16

17

- - - - -

18

Continued Videotaped Oral Deposition of

19

JOHN C. O'SHAUGHNESSY, taken at the Crowne Plaza

20

Princeton, 900 Scudders Mill Road, Plainsboro, New

21

Jersey, commencing at 9:35 a.m., by and before Robin

22

L. Clark, Registered Professional Reporter and

23

Notary Public in and for the State of New Jersey.

24

- - - - -

<p style="text-align: right;">Page 420</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LEVIN, PAPATONIO, RAFFERTY, PROCTOR, BUCHANAN, O'BRIEN, BARR & MOUGEY, P.A. BY: CHRISTOPHER V. TISI, ESQ. 316 South Baylen Street, Suite 600 Pensacola, Florida 32502-5996 850-435-7176 ctisi@levinlaw.com For the Plaintiff, Vickie Forrest</p> <p>7 COHEN, PLACITELLA & ROTH BY: CHRISTOPHER M. PLACITELLA, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 cplacitella@cprlaw.com For the MDL Plaintiffs</p> <p>13 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP BY: ALLISON M. BROWN, ESQ. and RICHARD T. BERNARDO, ESQ. One Manhattan West New York, New York 10001-8602 212-735-3000 allison.brown@skadden.com richard.bernardo@skadden.com For the Defendant, Johnson & Johnson</p> <p>19 YETTER COLEMAN LLP BY: COLLIN J. COX, ESQ. 811 Main Street, Suite 4100 Houston, Texas 77002 713-632-8000 ccox@yettercoleman.com For the Witness</p> <p>23 ALSO PRESENT: 24 JOEL SCHNEIDER, USMJ (Retired)</p>	<p style="text-align: right;">Page 422</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 BARNES LAW GROUP, LLP BY: JOHN R. BEVIS, ESQ. 31 Atlanta Street Marietta, Georgia 30060 678-290-2240 bevis@barneslawgroup.com For the Plaintiffs</p> <p>7 ROBINSON CALCAGNIE, INC. BY: GENEVIEVE OUTLAW, ESQ. 19 Corporate Plaza Drive Newport Beach, California 92660 949-720-1288 goutlaw@robinsonfirm.com For the Plaintiffs in JCCP 4872</p> <p>12 BLASINGAME, BURCH, GARRARD & ASHLEY, PC BY: LEANNA BANKESTER PITTARD, ESQ. and SARA SCHRAMM, ESQ. 2100 Southbridge Parkway Suite 650 Birmingham, Alabama 35209 866-354-3544 lpittard@bbga.com sschramm@bbga.com For the MDL Plaintiffs</p> <p>18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP BY: CATHERINE I. MULLALEY, ESQ. 500 Boylston Street Boston, Massachusetts 02116 617-573-4851 kate.mullaley@skadden.com For the Defendant, Johnson & Johnson</p>
<p style="text-align: right;">Page 421</p> <p>1 ALSO PRESENT, continued:</p> <p>2</p> <p>3 WILLIAM GEIGERT, VIDEOGRAPHER</p> <p>4 MICHAEL KUTYS, EXHIBIT TECH</p> <p>5 REMOTE APPEARANCES:</p> <p>6</p> <p>7 BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. BY: LEIGH O'DELL, ESQ. 218 Commerce Street Montgomery, Alabama 36104 800-898-2034 leigh.odell@beasleyallen.com For the Plaintiff, Vickie Forrest</p> <p>12 ASHCRAFT & GEREL, LLP BY: MICHELLE A. PARFITT, ESQ. 1825 K Street, N.W., Suite 700 Washington, D.C. 20006 202-759-7648 mparfitt@ashcraftlaw.com For the Plaintiff, Vickie Forrest</p> <p>17 COHEN, PLACITELLA & ROTH BY: DENNIS M. GEIER, ESQ. and HARRY M. ROTH, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 dgeier@cprlaw.com hroth@cprlaw.com For the MDL Plaintiffs</p>	<p style="text-align: right;">Page 423</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 FAEGRE DRINKER BIDDLE & REATH LLP BY: SUSAN M. SHARKO, ESQ. 600 Campus Drive Florham Park, New Jersey 07932 susan.sharko@faegredrinker.com 973-549-7000 For the Defendant, Johnson & Johnson</p> <p>8 SEYFARTH SHAW LLP BY: THOMAS T. LOCKE, ESQ. 975 F Street, N.W. Washington, D.C. 20004 202-828-5376 tlocke@seyfarth.com Appearing on behalf of Personal Care Products Council</p> <p>13 TUCKER ELLIS, LLP BY: ELIZABETH J. CUMMINGS, ESQ. 100 South 4th Street St. Louis, Missouri 63102 314-571-4969 elizabeth.cummings@tuckerellis.com For the Defendants, PTI Royston, LLC and PTI Union, LLC</p> <p>18 ALSO PRESENT: 19 LEA CALLAHAN, Paralegal 20 JEN SECRIST, Paralegal 21 STEPHANIE E. MARTIN 22 ----- 23 24</p>

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1	I N D E X		1	Exhibit 446	Agreement Between Cyprus & 511
2	WITNESS	PAGE		J&J dated 1/6/89	
3	JOHN C. O'SHAUGHNESSY		2	Exhibit 456	Report dated 11/23/83 Bates 744
	BY MR. PLACITELLA:	430, 879, 903	3	JNJ 000240739 to 40742	
4	BY MR. TISI:	776, 849	4	Exhibit 472	Photograph 900
	BY MS. BROWN:	779, 903	5	Exhibit 486	Privilege Log 715
5			6	Exhibit 488	Spreadsheet 891
6	E X H I B I T S		7	Exhibit 491	Memo dated 1/4/84 748
7	NUMBER	DESCRIPTION	8	Exhibit 525	Event Report dated 1/9/17 451
8	O'Shaughnessy			Bates JNJTALC000125625 to	
9	Exhibit JOS 1	McCrone Binder 1 482	9	125632	
10	Exhibit JOS 1A	McCrone Binder 2 482	10	Exhibit 1035	Letter dated 1/3/95 573
11	Exhibit JOS 2A	Musco-2/Hopkins Binder 1 430	11	Exhibit 1039	Excerpt for J&J Privilege 526
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12	Exhibit JOS 2B	Musco-2/Hopkins Binder 2 430	12	Exhibit 1040	Letter dated 8/14/89 563
13	of 2		13	Exhibit 1042	Dismissal Order 515
14	Exhibit JOS 3	Additional Testing Binder 430	14	Exhibit 1043	Deposition Of Roger N. 618
15	Exhibit 4	Handwritten Document 644		Miller dated 4/6/95	
16	Exhibit J&J 4	Cosmetics Document 894	15	Exhibit 1044	Deposition of Roger Miller 697
17	Exhibit TR-15	Deposition of Dr. John Hopkins dated 3/6/07 678	16	taken 1/16/07	
18	Exhibit 82	Muscat Video Clip 864	17	Exhibit 1047	Affidavit of Roger Miller 507
19	Exhibit 172	Deposition of Glenn A. Hemstock dated 1/28/83 536	18	in Miller case	
20	Exhibit 173	Deposition of Glenn A. Hemstock dated 3/16/83 538	19	Exhibit 1048	Letter dated 9/10/85 Bates 484
21				JNJ 000064652	
22	Exhibit 188	Stipulation of Dismissal, Letter dated 7/23/87, Affidavit of Roger Miller, and Letter dated 1/28/87 463	20	Exhibit 1049	Legal Hold Letter dated 718
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24			22	Exhibit 1051	Document Preservation 722
				Notice Bates JNJTAL000949679 to 949681	
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1	Exhibit 195	Affidavit of William H. Ashton 518	1	Exhibit 1052	Mediation Memo dated 2/4/03 666
2	Exhibit 198	Letter dated 11/26/90 and Attachment Bates JNJMX__68__000012851 to 12859 738		Bates JNJTALC001243929 to 1243949	
3	Exhibit 230	Affidavit of Dr. John Hopkins in Durham case 680	2	Exhibit 1053	Letter dated 6/6/88 475
4	Exhibit 270	Deposition of Roger N. Miller taken 6/12/91 896	3	Exhibit 1054	Letter dated 8/27/86 468
5	Exhibit 274	Letter dated 1/23/88 Bates JNJ 000024573 to 24576 633	4	Exhibit 1060	Transcript of John Hopkins 477
6	Exhibit 277	Answers to Interrogatories In Krushinski Case Bates JNJ 000065001 to 650011 663	5	Exhibit 1061	Andonian Case Witness List Bates JNJ 000065334 to 65339 497
7	Exhibit 282	Roger Miller Affidavit in Andonian case Bates JNJ-WIL__0000094 to 95 499	6	Exhibit D-1	Affidavit of Robert K. Denton 810
8	Exhibit 319	Letter dated 10/27/97 and Attachments 652	7	Exhibit D-2	Letter dated 9/28/72 and Report Bates JNJTALC000289268 to 359834 820
9	Exhibit 322	IARC Monograph 636	8	Exhibit D-3	Letter dated 3/18/02 Bates JNJTALC00109268 to 109278 828
10	Exhibit 355	Letter dated 1/28/1987 Bates JNJTALC0000387714 to 387716 729	9	Exhibit D-4	Case Control Studies that were Published from 1992 to 1999 845
11	Exhibit 414	Spreadsheet 890	10		
12	Exhibit 418	Email String dated 11/21/08 755	11		
13	Exhibit 436	Deposition of Peter N. Gale dated 4/26/83 547	12		
14	Exhibit 441	Stipulation and Confidentiality Order 554	13		
15	Exhibit 443	Windsor Minerals' Responses to Interrogatories in Westfall case 720	14		
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<p style="text-align: right;">Page 440</p> <p>1 Q. Okay. And who was in charge of 2 gathering evidence to supply answers to 3 discovery in talc litigation? 4 MS. BROWN: I object, 5 Your Honor, for the same reasons, 6 work product. 7 JUDGE SCHNEIDER: Can I 8 ask the court reporter to repeat 9 the question? 10 - - - - 11 (Whereupon, the reporter read 12 back as requested.) 13 - - - - 14 JUDGE SCHNEIDER: Okay. 15 Is the question who was in charge, 16 is that what it said? I think the 17 question who was in charge is 18 objectionable as work product, but 19 I don't think the question of who 20 supplied information to answer 21 interrogatories is work product. 22 That's clearly discoverable and is 23 an appropriate interrogatory that's 24 typically asked. So if the</p>	<p style="text-align: right;">Page 442</p> <p>1 talc litigation, they might have played a 2 role in that, I just don't recollect, but 3 as time went on and the litigation grew, 4 then, you know, then the legal team grew 5 and there was more responsibility 6 concerning ongoing discovery through the 7 legal team and collecting and interviewing, 8 you know, again, people at the company to 9 obtain the information. 10 Q. When evidence was turned over 11 in talc litigation, where was it stored, 12 within what Johnson & Johnson? 13 MS. BROWN: I object. 14 Work product, Your Honor. 15 JUDGE SCHNEIDER: 16 Objection overruled. That's not 17 work product. 18 THE WITNESS: Typically, 19 the documents would be collected 20 and maintained by outside counsel. 21 BY MR. PLACITELLA: 22 Q. So they would be kept with 23 outside counsel and would you at Johnson & 24 Johnson keep copies?</p>
<p style="text-align: right;">Page 441</p> <p>1 question is who supplied 2 information rather than the person 3 who was in charge, that can be 4 asked, but the question who was in 5 charge is work product. 6 BY MR. PLACITELLA: 7 Q. Okay. Can you answer Judge 8 Schneider's question? He's been around, 9 you know, on the bench, so he's a little 10 better at that than me. 11 A. When we answered discovery in 12 general, what would happen is outside 13 counsel in coordination with me would 14 interview appropriate people at the company 15 who had knowledge of the product or the 16 issues in the lawsuit. They would be 17 tasked also with collecting relevant 18 documents and assembling them for use in 19 the litigation. 20 Q. And that by name is who? 21 A. Early on, it would have been 22 Mr. Williams and the MehaffyWeber firm. It 23 also would have been to the extent if there 24 were any other firms that were handling</p>	<p style="text-align: right;">Page 443</p> <p>1 A. No, there was too many of them. 2 Q. Okay. And when there was 3 information from prior litigation, like, a 4 case was closed, a talc case, for example, 5 was closed, what was done with those files? 6 A. The Johnson & Johnson files 7 or -- 8 Q. Yes. 9 A. -- the outside counsel files? 10 Q. Both. 11 A. Johnson & Johnson had a file 12 system where the summons and complaint were 13 filed to it, so there would be a file for a 14 case name and a general file where papers 15 would be filed to that. And then they 16 would be maintained there, whatever papers 17 were filed, including the closing 18 documents. 19 Q. So, for example, if a witness 20 in a Johnson & Johnson talc case provided a 21 sworn statement that you reviewed, where 22 would that be -- where would that be saved 23 at Johnson & Johnson when the case was 24 over?</p>

<p style="text-align: right;">Page 464</p> <p>1 Q. He was one of the people you 2 relied on to tell you the truth and the 3 whole truth? 4 A. Yes. 5 Q. Okay. It says "Also enclosed 6 you will find an assay from McCrone 7 Environmental Services. I trust that these 8 documents will now unable to sign a 9 dismissal as was done in the Yuhas file." 10 Do you see that? 11 A. Yes. 12 Q. And now I want to go to the 13 actual affidavit of Mr. Miller. That's the 14 next page. He says that -- and Mr. Miller 15 was the president of Johnson & Johnson, 16 correct -- of Windsor Minerals, correct? 17 A. Yes. 18 Q. And that was a wholly-owned 19 subsidiary of Johnson & Johnson, correct? 20 A. Yes. 21 Q. And you worked as a lawyer, you 22 worked as a lawyer for both Windsor 23 Minerals and Johnson & Johnson at the same 24 time?</p>	<p style="text-align: right;">Page 466</p> <p>1 by Windsor Minerals, Inc., whether it is 2 ultimately sold to industrial users or used 3 in Johnson's Baby Powder, is sampled and 4 tested for the presence of asbestos." Do 5 you see that? 6 A. I do. 7 Q. "No evidence of the presence of 8 asbestos in Windsor Minerals' product has 9 ever be revealed by this testing." Do you 10 see that? 11 A. Yes. 12 Q. And you understand there's a 13 difference between saying no evidence, but 14 there is evidence, but we don't agree with 15 it? You understand there's a difference, 16 right? 17 MS. BROWN: Objection, 18 vague. 19 THE WITNESS: Yeah, I 20 guess so, yeah. 21 BY MR. PLACITELLA: 22 Q. Okay. And what he does is he 23 attaches a report. Do you see that? 24 That's the next page.</p>
<p style="text-align: right;">Page 465</p> <p>1 A. Yes. 2 Q. Okay. And Mr. Miller says "I 3 am the president of Windsor Minerals." Do 4 you see that? 5 A. Yes. 6 Q. And then he goes on and he says 7 "The exclusive business of Windsor 8 Minerals, Inc. is and has been for the last 9 18 years the mining and milling of talc 10 from a single mining district in Windsor, 11 Vermont. The mining district is the 12 exclusive source of talc for all Johnson's 13 Baby Powder sold in the United States." 14 That was your understanding, correct? 15 A. Yes. 16 Q. Okay. He goes on to say, "In 17 addition to supplying the talc for 18 Johnson's Baby Powder, Windsor Minerals 19 also sells a portion of its product to 20 independent industrial users." Do you see 21 that? 22 A. I do. 23 Q. Okay. Go to the next page, 24 please. He states "All of the talc mined</p>	<p style="text-align: right;">Page 467</p> <p>1 A. I do, yes. 2 Q. And you've seen reports like 3 this before in defending Johnson & Johnson, 4 correct? 5 A. I've seen testing reports from 6 time to time, yes. 7 Q. Okay. And what the report 8 says, it gives a whole bunch of numbers and 9 it says "examination found no quantifiable 10 amounts of asbestiform minerals." Do you 11 see that? 12 A. I do. 13 Q. Now, have you ever been 14 involved in drafting similar affidavits? 15 Were you involved in drafting this 16 affidavit? 17 A. No, it was before my time 18 there. 19 Q. Were you ever involved in 20 drafting similar affidavits? 21 A. I believe so. 22 Q. Okay. And do you know what the 23 factual predicate is for this affidavit? 24 What's the factual basis for it?</p>

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1 except him?

2 MR. PLACITELLA: You can

3 answer that.

4 THE WITNESS: Yeah,

5 there were attorneys for the

6 Engelhard Corporation.

7 BY MR. PLACITELLA:

8 Q. Right. They were not lawyers

9 working for Johnson & Johnson, correct?

10 A. No, they were not.

11 Q. Right. And what happened, the

12 back story is that they threatened to sue

13 Johnson & Johnson for selling them a pig in

14 a poke with the Johnson mine, right?

15 MS. BROWN: I object to

16 the form of that question as

17 argumentative, misstating the

18 evidence, and assuming facts.

19 THE WITNESS: They

20 threatened a lawsuit against

21 Johnson & Johnson for exposures to

22 talc mined from the Johnson &

23 Johnson mine at the time it was

24 owned by Johnson & Johnson and

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1 before. So it probably --

2 BY MR. PLACITELLA:

3 Q. Correct.

4 A. Yeah.

5 Q. And as a result of that threat,

6 you got together with the lawyers from

7 Engelhard and helped prepare this affidavit

8 in order to deal with the cases, right?

9 MS. BROWN: I object.

10 Lacks foundation.

11 THE WITNESS: What we

12 did was we participated in this

13 affidavit and Mr. Ashton wrote the

14 affidavit to protect Johnson &

15 Johnson's interests.

16 BY MR. PLACITELLA:

17 Q. Okay. Now, and so if we can go

18 back -- by the way, can you go to

19 Exhibit 1039, I'm assuming it's in book

20 two. And I'm looking specifically at

21 1039.12.

22 MS. BROWN: Counsel, can

23 you identify for the record what

24 this is?

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1 MR. PLACITELLA: Yes,

2 it's an excerpt from the Johnson &

3 Johnson privilege log.

4 - - - -

5 (Excerpt for J&J Privilege Log

6 marked O'Shaughnessy Exhibit 1039

7 for identification.)

8 - - - -

9 MS. BROWN: I object.

10 Lacks foundation.

11 MR. PLACITELLA: I'm not

12 going to ask privileged questions,

13 I'm just going to ask about

14 people --

15 MS. BROWN: Same

16 objection.

17 MR. PLACITELLA: -- as

18 identified on the log. You got it?

19 MS. BROWN: Same

20 objection.

21 THE WITNESS: Yeah.

22 BY MR. PLACITELLA:

23 Q. Do you see 5/5/1989 and it

24 lists Ira Dembrow, William Ashton, John

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1 O'Shaughnessy, and Howard Sloane?

2 A. Yes.

3 Q. They were people who worked on

4 the affidavit, right?

5 A. I remember working on it with

6 Mr. Dembrow.

7 Q. Right. And do you see where

8 your description says "memorandum with

9 attachment" and it refers directly to baby

10 powder litigation?

11 MS. BROWN: I object.

12 Lacks foundation. Misstates the

13 document and vague.

14 MR. PLACITELLA: Well,

15 it says "Memorandum with attachment

16 prepared by counsel pursuant to

17 pending and anticipated litigation

18 regarding baby powder litigation."

19 THE WITNESS: I see

20 that. I do.

21 BY MR. PLACITELLA:

22 Q. So Johnson & Johnson has listed

23 this affidavit as relevant to baby powder

24 litigation. Do you see that?

<p style="text-align: right;">Page 636</p> <p>1 A. No. No, I think her testing 2 was on her own accord. 3 Q. Correct. 4 A. And she published a study on 5 it, I think, in 1991. 6 Q. Exactly. So it was no secret 7 that Dr. Blount found asbestos in cosmetic 8 talc, it was in her published article, 9 correct? 10 MS. BROWN: Objection. 11 Speculation. 12 THE WITNESS: I don't 13 recall the article, but I think she 14 did report that. 15 BY MR. PLACITELLA: 16 Q. All right. And if you go to 17 322 in book one? 18 A. I have it. 19 - - - - - 20 (IARC Monograph marked 21 O'Shaughnessy Exhibit 322 for 22 identification.) 23 - - - - - 24</p>	<p style="text-align: right;">Page 638</p> <p>1 tests, finding asbestos in cosmetic talc, 2 you agree that was no secret? 3 MS. BROWN: I object. 4 Lacks foundation. 5 THE WITNESS: No, she 6 published on it. 7 BY MR. PLACITELLA: 8 Q. What was secret was that the 9 positive results were for Johnson's Baby 10 Powder, right, that was a secret? 11 MS. BROWN: That assumes 12 facts and misstates the evidence. 13 THE WITNESS: No, I 14 can't agree with that. 15 BY MR. PLACITELLA: 16 Q. Well, after you were told that 17 she found asbestos in your baby powder, the 18 very subject of her article, who did you 19 tell outside of Johnson & Johnson? 20 MS. BROWN: I object to 21 that question. And instruct you, 22 Mr. O'Shaughnessy, if you did 23 anything in connection with 24 litigation where Dr. Blount was a</p>
<p style="text-align: right;">Page 637</p> <p>1 BY MR. PLACITELLA: 2 Q. Okay. This is a monograph that 3 was published by IARC and you know that's 4 an international working group on cancer, 5 right? 6 A. Yes. 7 Q. And Dr. Blount, if you go to 8 322.246. Dr. Blount's testing results were 9 so important in finding asbestos in the 10 cosmetic talc that it was actually 11 published by IARC in 2012, some, what, 12 20-plus years after? 13 MS. BROWN: I object. 14 It misstates the evidence and lacks 15 foundation with this witness. 16 THE WITNESS: It appears 17 in the monograph. 18 BY MR. PLACITELLA: 19 Q. Right. 20 A. I don't know if it makes it 21 more important or less important, but it 22 certainly appears there. 23 Q. Okay. So it was no secret that 24 Dr. Blount and the significance of her</p>	<p style="text-align: right;">Page 639</p> <p>1 consulting expert not to answer 2 that question. 3 BY MR. PLACITELLA: 4 Q. Okay. Who did you tell outside 5 of Johnson & Johnson or the experts that 6 were working for Johnson & Johnson about 7 the secret that Johnson & Johnson -- that 8 Alice Blount found asbestos in Johnson's 9 Baby Powder? 10 MS. BROWN: I object to 11 the form of the question. It 12 assumes facts and misstates the 13 evidence. 14 THE WITNESS: Yeah, I 15 didn't consider anything like that 16 a secret and I wouldn't have 17 normally discussed any company 18 business with people outside the 19 company. 20 BY MR. PLACITELLA: 21 Q. Who did you tell inside Johnson 22 & Johnson that Dr. Blount found asbestos in 23 Johnson's Baby Powder? 24 MS. BROWN: And I</p>

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1 THE WITNESS: So it
2 looks like, I don't recall this
3 document, but it looks like to me
4 that questions were directed to
5 McCrone.
6 BY MR. PLACITELLA:
7 Q. Correct.
8 A. And so the Johnson & Johnson
9 lawyers objected to the questions to
10 McCrone.
11 Q. Correct.
12 A. And on the basis of the
13 objections, including -- I mean, there are
14 a lot of objections here and a lot of this
15 goes to, I guess, the procedure involved in
16 Texas for these sorts of questions to a
17 nonparty.
18 Q. Okay.
19 A. And part of that refers to
20 Texas law --
21 Q. Yup.
22 A. -- that the request was in
23 violation of the Texas law.
24 Q. Yeah. Go ahead.

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1 A. And in terms of the form it was
2 used, so that was an objection. And then
3 they add, among other objections, that "the
4 information requested is subject to
5 proprietary and trade secret privileges of
6 Defendant." So yes, we did assert that.
7 Q. So now we have two sets of
8 secrets in the Coker case, the Blount
9 article, and all the testing documents,
10 right?
11 MS. BROWN: I object.
12 Argumentative, misstates the
13 evidence.
14 BY MR. PLACITELLA:
15 Q. The fact -- I'm sorry, I
16 misspoke, we have two secrets. One, Alice
17 Blount found asbestos in Johnson's Baby
18 Powder; and two, all the testing documents
19 on your right?
20 MS. BROWN: Objection.
21 Misstates the evidence,
22 argumentative.
23 THE WITNESS: No, like I
24 said before, the Blount issue was

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1 not a secret. And number two, what
2 you call a second secret is a trade
3 secret. Now, there's a whole law
4 around trade secret. It's a term
5 of art that applies to a company's
6 documents that I believe are so
7 sensitive that disclosure of them
8 without certain protections would
9 harm the business of the company.
10 So it's not a secret. It's a trade
11 secret and it's recognized and it's
12 often made in objections.
13 BY MR. PLACITELLA:
14 Q. Okay. Did you turn the
15 documents over then?
16 MS. BROWN: Objection.
17 Assumes facts.
18 THE WITNESS: I don't
19 know. I mean, you're showing me
20 one snippet of this discovery
21 record and I'm not sure if it was
22 or wasn't, because if we raised the
23 trade secret objection, then a lot
24 of things could have happened and I

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1 don't recall what. But the
2 plaintiff who wanted the documents
3 could say, well, no, we don't agree
4 with Johnson & Johnson and take it
5 into the court and the court would
6 have ruled on it. I don't know if
7 any of that happened, but there's a
8 whole procedure involved here.
9 BY MR. PLACITELLA:
10 Q. All my question is, sir, do you
11 have any proof, as you sit here today, that
12 you turned any of those documents over on
13 your right in the Coker case?
14 MS. BROWN: Objection.
15 Assumes facts.
16 THE WITNESS: I don't
17 recall what we did in the Coker
18 case. I don't recall a discovery
19 record. We may not have with the
20 court's permission or we may have
21 had to turn them over with the
22 court's ruling.
23 BY MR. PLACITELLA:
24 Q. Okay. Well, you said that --

Exhibit 187

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION - MIDDLESEX COUNTY
3 DOCKET NO. MID-L-1030-19 AS

4 VIDEOTAPED
5 VIRTUAL

6 ROY COKER, individually and as, DEPOSITION UPON
7 Executor of the Estate of ORAL EXAMINATION
8 DARLENE COKER, Deceased, OF
9 and CRYSTAL DECKARD and JOHN C. O'SHAUGHNESSY
10 CATHRYN EVANS, Individually (VOL. II)
11 and as Individual Heirs of the
12 Estate of DARLENE COKER,

13 Plaintiffs,

14 v.

15 JOHNSON & JOHNSON, et al.,
16 Defendants.

17 -----
18 DAVID HAMMOCK, Individually and
19 as Administrator of the Estate MID-L-5103-18 AS
20 of SANDRA HAMMOCK,
21 Plaintiffs,

22 v.

23 JOHNSON & JOHNSON, et al.,
24 Defendants.

25 -----
26 CANDYSE STANFORD and JOHN
27 STANFORD, MID-L-8486-19 AS
28 Plaintiffs,

29 v.

30 JOHNSON & JOHNSON, et al.,
31 -----

32 JOB NO.: 4580329

<p style="text-align: right;">Page 264</p> <p>1 TRANSCRIPT of the stenographic notes of 2 ANDREA F. NOCKS, a Certified Court Reporter and 3 Certified Realtime Court Reporter of the State of 4 New Jersey, Certificate No. XI01573, taken virtually 5 on Wednesday, June 23, 2021, commencing at 6 9:35 a m., Eastern Standard Time. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 266</p> <p>1 A P P E A R A N C E S: 2 McCARTER & ENGLISH, LLP BY: JOHN C GARDE, ESQ 3 Four Gateway Center 100 Mulberry Street 4 Newark, New Jersey 07102-4056 Attorneys for Defendant, 5 Johnson & Johnson 6 FAEGRE DRINKER BIDDLE & REATH, LLP 7 BY: SUSAN M SHARKO, ESQ 600 Campus Drive 8 Florham Park, New Jersey 07932-1047 Attorneys for Johnson & Johnson 9 defendants 10 11 ALSO PRESENT: JIM ROBERTS, VIDEOGRAPHER 12 13 RACHEL GOODMAN, MONTGOMERY McCracken Walker & Rhoads 14 LLP 15 CHRIS PLACITELLA, ESQ 16 COHEN, PLACITELLA & ROTH 17 CHRISTOPHER V TISI, ESQ 18 LEVIN PAPANTONIO RAFFERTY 19 MICHELLE PARFITT, ESQ 20 ASHCRAFT & GEREL, LLP 21 LEVY KONIGSBERG LLP 22 BRADY McLAUGHLIN, Paralegal JOSH DISCHINGER, Paralegal 23 24 SKADDEN, ARPS, SLATE, MEAGHER & FLOM PAUL COTLER, Legal Assistant 25 STEPHANIE MARTIN, Legal Assistant</p>
<p style="text-align: right;">Page 265</p> <p>1 BEFORE: 2 SPECIAL MASTER JOEL SCHNEIDER 3 MONTGOMERY McCracken Walker & Rhoads LLP Liberty View 4 457 Haddonfield Road Suite 600 5 Cherry Hill, NJ 08002 6 7 A P P E A R A N C E S: 8 LEVY KONIGSBERG LLP BY: JEROME H BLOCK, ESQ 9 MOSHE MAIMON, ESQ ROBERT ELLIS, ESQ 10 605 Third Avenue 33rd Floor 11 New York, New York 10158 Attorneys for Plaintiffs 12 13 YETTER COLEMAN LLP BY: COLLIN J COX, ESQ 14 811 Main Street Suite 4100 15 Houston, Texas 77002 Attorneys for Witness, 16 John C O'Shaughnessy 17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM 18 LLP BY: ALLISON M BROWN, ESQ 19 RICHARD BERNARDO, ESQ CATHERINE MULLALEY, ESQ 20 BRIAN McCARTHY, ESQ One Manhattan West 21 New York, New York 10001 Attorneys for Defendants, 22 Johnson & Johnson, Johnson & Johnson Consumer Products, Inc 23 24 25</p>	<p style="text-align: right;">Page 267</p> <p>1 INDEX 2 PAGE 3 WITNESS: 4 JOHN C. O'SHAUGHNESSY 5 EXAMINATION BY: 6 MR. BLOCK 272, 503, 532 7 MS. BROWN 459, 526 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 268</p> <p>1 EXHIBITS</p> <p>2 NUMBER DESCRIPTION IDENTIFICATION</p> <p>3 15A Business Confidential</p> <p>4 Research Report 275</p> <p>5 15B January 22, 1998 letter 290</p> <p>6 16 February 13, 1998 e-mail 321</p> <p>7</p> <p>8 19 10/16/97 memo 325</p> <p>9</p> <p>10 25 July 29, 1971 letter 344</p> <p>11 26 October 27, 1972, Examination</p> <p>12 Of Johnson & Johnson's Baby</p> <p>13 Powder 350</p> <p>14 26A May 14, 1971,</p> <p>15 Assay of Talc in Baby Powder 533</p> <p>16 26B April 24, 1974, Examination</p> <p>17 Of Talc Samples,</p> <p>18 Argonaut Ore Body 354</p> <p>19</p> <p>20 33 July 1, 1999 e-mail 372</p> <p>21</p> <p>22 35 June 4, 2000 e-mail 363</p> <p>23 35A February 4, 2000 e-mail 369</p> <p>24 36 E-mail chain 394</p> <p>25</p>	<p style="text-align: right;">Page 270</p> <p>1 VIDEOGRAPHER: Good morning.</p> <p>2 We're going on the record at</p> <p>3 approximately 9:35 a.m. on June 23rd, 2021.</p> <p>4 Please silence cell phones, computer</p> <p>5 tones and other electronic devices.</p> <p>6 Audio and video recording will</p> <p>7 continue to take place unless all parties agree to</p> <p>8 go off the record.</p> <p>9 This is Media Unit 1 of the remote</p> <p>10 video recorded deposition of John C. O'Shaughnessy</p> <p>11 taken by counsel for plaintiff in the matter of Roy</p> <p>12 Coker, et al., versus Johnson & Johnson, et al.,</p> <p>13 filed in the Superior Court of New Jersey, Law</p> <p>14 Division, Middlesex County, under multiple docket</p> <p>15 numbers.</p> <p>16 My name is Jim Roberts, here in</p> <p>17 association with Priority One, a Veritext company.</p> <p>18 I'm the videographer. The court reporter is Andrea</p> <p>19 Nocks, also with Veritext.</p> <p>20 All counsel consent to this remote</p> <p>21 video arrangement, waive objections to this manner</p> <p>22 of recording and to the remote swearing in of the</p> <p>23 witness.</p> <p>24 The court reporter has noted</p> <p>25 counsels' appearances and will please swear in the</p>
<p style="text-align: right;">Page 269</p> <p>1 EXHIBITS CONT'D</p> <p>2 NUMBER DESCRIPTION IDENTIFICATION</p> <p>3 37 E-mail chain 485</p> <p>4 37A 11/27/2000 e-mail 400</p> <p>5</p> <p>6 39 3/29/2002 e-mail 406</p> <p>7 40 October 23, 2002 memo 411</p> <p>8 40A October 1, 2002 fax</p> <p>9 Asbestos Phobia to</p> <p>10 Eat At Economy 420</p> <p>11 40B September 19, 2002 letter 417</p> <p>12 41 August 19, 2003 fax 426</p> <p>13 41A May 17, 2001 e-mail 422</p> <p>14 42 February 24, 2004 fax 436</p> <p>15 43 3/3/2004 e-mail 441</p> <p>16 43A E-mail chain 445</p> <p>17</p> <p>18 45 E-mail chain 509</p> <p>19</p> <p>20 48 E-mail chain 430</p> <p>21</p> <p>22 (Exhibits e-mailed to Certified Court Reporter.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 271</p> <p>1 witness.</p> <p>2 JOHN C. O'SHAUGHNESSY,</p> <p>3 C/o Skadden Arps, Slate, Meagher & Flom, LLP,</p> <p>4 One Manhattan West, New York, New York, having been</p> <p>5 first duly sworn, testifies as follows:</p> <p>6 MS. BROWN: Mr. Block, before you</p> <p>7 begin, I just want to further put on the record our</p> <p>8 objection to the use of Exhibit 15.</p> <p>9 The document at issue is protected</p> <p>10 work product, created in defense of the talc</p> <p>11 litigation. It's our position that sharing that</p> <p>12 with Luzenac did not waive the work product</p> <p>13 protection, given the company's common interest in</p> <p>14 the talc litigation. Luzenac, as you know, is a</p> <p>15 supplier of Johnson & Johnson's talc.</p> <p>16 Luzenac or Imerys who produced the</p> <p>17 document cannot, on its own, waive the work product</p> <p>18 protection over J&J's work product. And our failure</p> <p>19 to claw back somebody else's documents does not</p> <p>20 change that outcome because, of course, we did not</p> <p>21 produce it and were not aware of the production</p> <p>22 until yesterday.</p> <p>23 So we understand the court's ruling.</p> <p>24 We're prepared to allow Mr. O'Shaughnessy to answer</p> <p>25 questions about the four corners of this document.</p>

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<p style="text-align: right;">Page 272</p> <p>1 But for the record, we do believe that this is work 2 product that can't be waived by another company. 3 MR. BLOCK: Okay. I disagree with 4 everything you said, but with that, I'm going to 5 proceed. 6 CONTINUED DIRECT EXAMINATION BY MR. BLOCK: 7 Q. Mr. O'Shaughnessy, can you hear me? 8 A. I can. 9 Q. Okay. Mr. O'Shaughnessy, when we 10 left off yesterday we were looking at Exhibit 15 to 11 your deposition. 12 Do you remember that? 13 A. I'll go to it right now. 14 Q. And you could see on the screen that 15 Exhibit 15 is a fax that you sent on April 16, 1998, 16 correct? 17 A. Yes. 18 Q. And you sent to Mr. Zazenski from 19 Luzenac, correct? 20 A. That's right. 21 Q. Luzenac was the talc supplier for 22 Johnson's Baby Powder at the time, correct? 23 A. Yes. I'm sorry. What am I looking 24 at, Exhibit 15? 25 Q. Exhibit 15, page 2, sir.</p>	<p style="text-align: right;">Page 274</p> <p>1 A. I do. 2 Q. Then you wrote, "Those documents 3 dated back to 1982." 4 Do you see that? 5 A. Yes. 6 Q. Then you wrote, "In our lawsuit, the 7 person suing Johnson & Johnson had exposure to 8 Italian talc used in our baby powder that was 9 produced from 1945 through 1963." 10 Is that what you wrote? 11 A. Yes. 12 Q. Then you wrote, "After 1963 or so, 13 Johnson & Johnson began using Vermont talc." 14 That's what you wrote, correct? 15 A. Yes. 16 Q. Then you wrote, "Therefore, it is 17 very important that we be able to provide evidence 18 to the court that the talc produced from Val Chisone 19 in the 1945 to 1963 timeframe was free from 20 asbestiform fibers." 21 Do you see that? 22 A. I do. 23 Q. And when you made this statement to 24 Mr. Grange from Luzenac, you know that Johnson & 25 Johnson, as you testified to yesterday, was telling</p>
<p style="text-align: right;">Page 273</p> <p>1 A. I'm sorry. Okay. Got it. Yes. 2 Q. And do you remember Mr. Zazenski from 3 Luzenac? 4 A. I do. 5 Q. And what do you remember about him? 6 A. He was, I recall that he was the 7 point person for me for litigation matters between 8 the companies involving the supply of talc. 9 Q. And in your fax to Mr. Zazenski, 10 let's see what you wrote. What you attach to the 11 fax to Mr. Zazenski, I guess because he was your 12 point person, was a letter actually to someone else 13 at Luzenac, someone named Mr. Jean Pierre Grange, 14 correct? 15 A. Yes. 16 Q. And your letter to Mr. Grange is in 17 regard to Coker, which, you put in parentheses, 18 "(Texas mesothelioma lawsuit)." 19 That's what you wrote, correct? 20 A. Yes. 21 Q. And you wrote to Mr. Grange from 22 Luzenac, "Thank you so much for providing me with 23 the documents related to talc testing and the Val 24 Chisone deposit." 25 Do you see that?</p>	<p style="text-align: right;">Page 275</p> <p>1 the public that there was never asbestos in the talc 2 used in Johnson's Baby Powder, correct? 3 A. That was Johnson & Johnson's position 4 throughout. 5 Q. Okay. And I want to hone in on this 6 statement here. And you say that the documents 7 related to talc testing, you were thanking Luzenac 8 for providing them to you, but you were saying that 9 those documents regarding the testing of Italian 10 talc only dated back to 1982. 11 Is that what your letter states? 12 A. It says those documents dated back to 13 1982, yes. 14 Q. Right. Referring to documents 15 related to talc testing, right? 16 A. In the Val Chisone deposit, yes. 17 Q. And the Val Chisone deposit was the 18 Italian talc that was used in Johnson's Baby Powder, 19 right? 20 A. Yes. 21 Q. Okay. Let's go to the next exhibit, 22 which is Exhibit 15A, okay. And Exhibit 15A is 23 entitled "Business Confidential" on the top right, 24 correct? 25 A. Yes.</p>

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<p style="text-align: right;">Page 276</p> <p>1 Q. And Exhibit 15A is entitled "Research 2 Report" and there's a name, "Battelle Memorial 3 Institute," on the bottom. 4 Do you see that? 5 A. I do. 6 Q. Okay. And if we look at the cover 7 page of the report, which is the third page in, we 8 see that the title of the report is "Phase Report on 9 Pilot-Plant Beneficiation of Italian Run-Of-Mine 10 Talc," correct? 11 A. Yes. 12 MS. BROWN: Objection to this 13 document on foundation. 14 BY MR. BLOCK: 15 Q. And this is to Johnson & Johnson, 16 correct? 17 A. That's what it says. 18 Q. And this is dated March 8, 1960, 19 right? 20 A. That's the date on it. 21 Q. And this document about Italian talc 22 which was sent to Johnson & Johnson from Battelle is 23 dated March 8, 1960, which is well before 1982, 24 correct? 25 A. It's before 1982, obviously, yeah.</p>	<p style="text-align: right;">Page 278</p> <p>1 And that committee, in advance of the 2 FDA meeting, was assembling the information from 3 around the company; not that it hadn't been done 4 before, I think, but they were doing it in advance 5 of the FDA meeting. 6 So those are the people responsible 7 in part, you know, not all of them, but for the 8 safety of the product. And I was there, you know, 9 identified as the lawyer. It was at that time there 10 was some publicity around the product and there were 11 some legal cases, so I was there in my role as a 12 lawyer for the litigation to provide information 13 about the cases should they need that, and also to 14 understand the issues, my own views in litigation 15 around the FDA meeting. 16 Q. Move to strike the portion that was 17 not responsive. 18 You were on J&J's Worldwide Talc 19 Steering Committee: Yes or no? 20 A. Yes, they identified me as on there, 21 yeah. 22 Q. Okay. And one of the scientists from 23 Johnson & Johnson that provided information to J&J's 24 Talc Steering Committee was William Ashton, correct? 25 A. Yes, Mr. Ashton was a, I don't know,</p>
<p style="text-align: right;">Page 277</p> <p>1 Q. Okay. And this document from the 2 Battelle Memorial Institute, if you look at the 3 fourth page in, was sent to Mr. William Ashton from 4 Johnson & Johnson in New Brunswick, New Jersey, 5 correct? 6 A. Yeah, that's what it says. I'm just 7 trying -- do you know what Bates number that is, 8 because I'm following with the hard copy document? 9 Q. The Bates number on the bottom right 10 corner is 580 at the end. 11 A. Got it. Thank you. 12 Q. Okay. And this report from the 13 Battelle Memorial Institute was sent to Mr. William 14 Ashton way back in 1960, right? 15 A. Yes. 16 Q. And just to be clear, sir, when you 17 were on the Talc Steering Committee, as we saw, one 18 of the purposes of the Talc Steering Committee was 19 to monitor the science of talc including studies on 20 talc, publications on talc, correct? 21 A. Yeah, those were the people from the 22 company, those are on the, I think the documents you 23 showed me yesterday, which included the names of, 24 you know, the scientists, I think some regulatory 25 people, corporate communications people.</p>	<p style="text-align: right;">Page 279</p> <p>1 I forget his background, but I believe he was 2 definitely a technical scientific person, yes. 3 Q. Did you ever hear Mr. Ashton referred 4 to at Johnson & Johnson as Mr. Talc or the leading 5 expert on talc? 6 A. No, I know he was very well versed in 7 the field because he had been working on it. You 8 know, this memo you're showing me now shows that Mr. 9 Ashton went back with talc a long way. 10 Q. And you regularly communicated with 11 William Ashton while you were on J&J's Talc Steering 12 Committee: Yes or no? 13 A. I communicated with Mr. Ashton from 14 time to time. I wouldn't call it regular, but as I 15 needed information or had questions with respect to 16 litigation. So it was -- 17 Q. You spoke -- 18 MS. BROWN: Let him finish. 19 A. It was probably during the time I 20 was, that they said I was on that committee, but it 21 would be other times as well. 22 Q. You spoke to Mr. Ashton on many 23 occasions about talc, correct? 24 A. Yes. 25 Q. All right. So looking at this report</p>

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<p style="text-align: right;">Page 280</p> <p>1 that was sent to William Ashton in 1960, it says, 2 "Dear Mr. Ashton, We are pleased to transmit six 3 copies of our Phase Report, Pilot-Plant 4 Beneficiation of Italian Run-Of-Mine Talc." 5 Is that what it says? 6 A. Yes. 7 Q. And then on the page that ends with 8 582, just turn two pages more, there's a sentence at 9 the top, it says, "Laboratory work." 10 Do you see that? 11 A. Yes, in the body, yes. 12 Q. It says, "Laboratory work had shown 13 that a superior talc product could be produced by 14 wet grinding and flotation of Italian run-of-mine 15 talc." 16 Do you see that? 17 A. Yes. 18 Q. Okay. And it abbreviates, there's a 19 note at the bottom that run-of-mine talc, there's an 20 abbreviation, ROM. 21 Do you see that? 22 A. Yeah. 23 Q. Okay. 24 A. Yeah. 25 Q. All right. And please go to the</p>	<p style="text-align: right;">Page 282</p> <p>1 2 percent tremolite, correct? 2 A. 1 to 2 is under there, yeah, 3 tremolite, 1-2. 4 Q. 1-2 under percent tremolite, correct? 5 A. Yes. 6 Q. And for combined by-products, 1 to 2 7 percent tremolite, correct? 8 A. Yes. 9 Q. Johnson & Johnson shelf product, it 10 says, "trace," tremolite, correct, TR? 11 A. TR, yes. 12 Q. Okay. And there's a footnote D, and 13 it says that the Johnson & Johnson shelf product was 14 a sample of August 1958, correct? 15 A. I see that, yes. 16 Q. And under Italian Number 2, 17 beneficiated talc, under tremolite it says, "trace," 18 correct? 19 A. Correct. 20 Q. And it doesn't say zero under 21 tremolite for any of these Italian talc products, 22 correct? 23 A. Right. 24 Q. And to your knowledge, did Mr. Ashton 25 ever share this report with the Talc Steering</p>
<p style="text-align: right;">Page 281</p> <p>1 page, let me rotate the view here so you could see 2 it. All right. Please turn to the page that ends 3 in Bates 594. You'll see Table 8. 4 A. I have it. 5 Q. Okay. And in the report sent to 6 William Ashton from Johnson & Johnson, Table 8 says, 7 "Characteristics of talc products." 8 Do you see that? 9 A. Yes. 10 Q. All right. And it says, "ROM," 11 run-of-mine, "talc untreated, tremolite, 1 percent," 12 correct? 13 A. It says one, yeah. 14 Q. Right? It says that it's in per cent 15 at the top. 16 Do you see that? 17 A. I do. 18 Q. And then it says, beneficiated run of 19 mill talc under tremolite says, "trace," T-R, trace, 20 correct? 21 A. Right. 22 Q. And for primary cyclone overflow, it 23 says plus or minus 1 percent tremolite, correct? 24 A. Correct. 25 Q. For the flotation tailing, it's 1 to</p>	<p style="text-align: right;">Page 283</p> <p>1 Committee at J&J? 2 MS. BROWN: Objection; foundation; 3 speculation. 4 A. I wouldn't know. They did a lot of 5 activity outside my presence, so I have no idea. 6 Q. Is this the first time that you have 7 ever seen a report from Battelle which tested J&J's 8 talc? 9 MS. BROWN: I object, 10 Mr. O'Shaughnessy, and I instruct you not to answer 11 the question if doing so would reveal information 12 you may have reviewed in connection with defending 13 the company in talcum powder lawsuits. 14 MR. BLOCK: Let me rephrase the 15 question. 16 BY MR. BLOCK: 17 Q. Mr. O'Shaughnessy, is this the first 18 time that you could ever recall seeing a report from 19 Battelle which tested J&J's talc? 20 MS. BROWN: It's the same objection. 21 MR. BLOCK: I'd ask for a ruling. 22 SPECIAL MASTER: The ruling is that 23 the objection is overruled. 24 BY MR. BLOCK: 25 Q. Could you please answer, sir?</p>

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<p style="text-align: right;">Page 284</p> <p>1 SPECIAL MASTER: Hold on. Hold on. 2 The questioner is only asking the witness if he's 3 seen this before. He's not asking when, how, where, 4 et cetera. The answer will give absolutely no 5 indication whether, if the witness saw it, he saw it 6 in connection with litigation or some other issue. 7 When and if plaintiffs' counsel goes 8 further with his questions which would seek to 9 identify whether the knowledge was gained in 10 connection with litigation, then we may have an 11 appropriate objection. But just the general 12 question whether he's seen it before reveals no work 13 product. That's my ruling. 14 MS. BROWN: Understood. 15 MR. BLOCK: Can we have the question 16 read back and an answer, please. 17 (The following Question is read back: 18 "QUESTION: Mr. O'Shaughnessy, is 19 this the first time that you could ever recall 20 seeing a report from Battelle which tested J&J's 21 talc?") 22 A. That's different from what Judge 23 Schneider said. The question that Judge Schneider 24 thought was appropriate, if I heard it from the 25 judge correctly, was have I ever --</p>	<p style="text-align: right;">Page 286</p> <p>1 question, Mr. O'Shaughnessy. 2 MS. BROWN: Thank you, your Honor. 3 A. The way I understood Judge 4 Schneider's ruling was that the question was have I 5 ever seen this document before, and I think 6 Mr. Block's question as read back was different than 7 that. 8 MR. BLOCK: Your Honor, that is not 9 how I understood your ruling. You heard my 10 question, you overruled the objection, and I don't 11 think there's any misunderstanding at all. 12 If I could have the question read 13 back and the question answered, that's what I would 14 request at this point, your Honor. 15 SPECIAL MASTER: Please have the 16 court reporter repeat the question. 17 (The following Question is read back: 18 "QUESTION: Mr. O'Shaughnessy, is 19 this the first time that you could ever recall 20 seeing a report from Battelle which tested J&J's 21 talc?") 22 SPECIAL MASTER: That's an 23 appropriate question and can be answered, 24 Mr. O'Shaughnessy. I do not believe it requires you 25 to reveal any work product at all.</p>
<p style="text-align: right;">Page 285</p> <p>1 MR. BLOCK: Your Honor, excuse me, 2 who's speaking right now? 3 MS. BROWN: You just interrupted him, 4 so if you're going to -- 5 MR. BLOCK: No, your Honor, your 6 Honor, is Mr. O'Shaughnessy making a legal 7 objection? 8 MS. BROWN: No, Jerry -- 9 SPECIAL MASTER: Hold on. Hold on. 10 Hold on. Please, counsel. Please. Let's keep this 11 on a professional level. 12 MR. BLOCK: I'm sorry, I didn't know 13 who was speaking. 14 SPECIAL MASTER: That was 15 Mr. O'Shaughnessy. 16 MR. BLOCK: Okay, your Honor, I 17 object -- I object -- 18 SPECIAL MASTER: Hold on. 19 MR. BLOCK: -- to Mr. O'Shaughnessy 20 objecting. 21 SPECIAL MASTER: Hold on. Please, 22 Mr. O'Shaughnessy. I understand what's going on. 23 Mr. O'Shaughnessy just wants 24 clarification of the question to be answered. That 25 is an appropriate inquiry, so you may ask your</p>	<p style="text-align: right;">Page 287</p> <p>1 Is this the first occasion you could 2 ever recall seeing the report? 3 A. I don't recall seeing this report. I 4 don't recall seeing it, so I don't know if this is 5 the first time or not for this report, but I don't 6 recall seeing it. 7 Q. Mr. O'Shaughnessy, before I showed 8 you this report from Battelle here today, do you 9 ever recall seeing any report from Battelle which 10 tested J&J's talc? 11 MS. BROWN: It's the same question. 12 I object as asked and answered. 13 SPECIAL MASTER: No, it's not the 14 same question because the first question was Exhibit 15 15A and the question is broader than just 15A. It 16 asks about any Battelle report, not just this 15A, 17 so it's not the same question. 18 MS. BROWN: I understood the first 19 question to be broader than 15A, but I understand, 20 judge. 21 MR. BLOCK: Could we have the 22 question read back so the witness can answer, 23 please. 24 (The following Question is read back: 25 "QUESTION: Mr. O'Shaughnessy, before</p>

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<p style="text-align: right;">Page 288</p> <p>1 I showed you this report from Battelle here today, 2 do you ever recall seeing any report from Battelle 3 which tested J&J's talc?") 4 A. In preparing these cases and working 5 on the litigation, I did see testing documents from 6 the outside labs. I don't remember which ones as I 7 sit here now, but I did see some testing documents, 8 yes, from outside labs, and Battelle is a familiar 9 name to me as an outside lab for J&J. 10 Q. So is your answer that you don't 11 recall ever seeing any report from Battelle before 12 today testing J&J's talc or that you're not sure? 13 A. I'm trying to describe as best I can 14 'cause it's going back so long. I saw testing 15 reports from outside labs from J&J as part of my 16 work on the litigation. Battelle is familiar to me 17 as one of the outside labs, and I believe there were 18 others. But, you know, I don't recall specifically, 19 you know, which reports I saw from which labs. It 20 might have been all of them, some of them. I just 21 don't recall that detail. And that's kind of the 22 best way I can answer. 23 Q. Okay, sir. Now, looking at Exhibit 24 15A that we just went through where tremolite is 25 reported in the Italian talc, including Johnson &</p>	<p style="text-align: right;">Page 290</p> <p>1 well. 2 Q. Okay. And you gave the final 3 approval of those Answers to Interrogatories, as you 4 testified to yesterday, right? 5 A. Yes. 6 Q. And Nancy Musco signed those Answers 7 to Interrogatories with the assistance and advice of 8 counsel, and she said that she understood those 9 statements, she understood that if any of the 10 foregoing statements made were willfully false, it 11 may subject her and the company to punishment, 12 right? That's what it says? 13 MS. BROWN: Objection (inaudible). 14 A. I may be subject to punishment. 15 (Court Reporter clarification.) 16 MS. BROWN: I apologize, Andrea. My 17 objection was this was asked and answered 18 extensively yesterday. 19 BY MR. BLOCK: 20 Q. Sir, let's look at Exhibit 15B, 21 please. Exhibit 15B, let's just go to the second 22 page. 23 Do you see that this is a letter from 24 Johnson & Johnson Consumer dated January 22nd, 1998? 25 A. Yes.</p>
<p style="text-align: right;">Page 289</p> <p>1 Johnson shelf product. 2 Do you see that? 3 A. I see that, yes. 4 Q. Okay. All right. And looking on the 5 screen, we looked at the document yesterday, we're 6 looking at part of the answers to the Krushinski 7 case. 8 You remember we looked at that 9 yesterday? 10 A. I do. 11 Q. And as we could see on the screen 12 looking at Exhibit 32, J&J's answer in the 13 Krushinski case was, in 2000, in the year 2000 was, 14 "to the best of defendant's knowledge, talc used in 15 the manufacture of Johnson & Johnson's Baby Powder 16 never contained asbestos in any form, or tremolite." 17 That's what it says, right? 18 A. Did not contain asbestos or 19 tremolite, yes. 20 Q. The words used are, "Johnson's Baby 21 Powder never contained asbestos in any form," comma, 22 "or tremolite." 23 A. Okay. 24 Q. Correct? 25 A. I was reading from the bottom as</p>	<p style="text-align: right;">Page 291</p> <p>1 Q. Do you see that this is a letter to 2 that same Richard Zazenski from Luzenac that you had 3 sent that fax to that we looked at earlier? 4 A. Right. 5 Q. All right. And you see that this is 6 a letter from Michael Chudkowski from Johnson & 7 Johnson Consumer? 8 A. Yes. 9 Q. And the letter says, to Mr. Zazenski, 10 "Dear Rich, This will confirm our meeting on talc 11 for Friday, February 6, 1998 at Johnson & Johnson 12 Consumer." 13 Do you see that? 14 A. I do. 15 Q. And it says, "Please notify Jean 16 Pierre Grange and let me know your flight 17 schedules." 18 Do you see that? 19 A. Yes. 20 Q. And John Pierre Grange was the person 21 from Luzenac in France that you had written to about 22 the Coker case in the exhibit we looked at earlier, 23 correct? 24 A. Yes. 25 Q. And Mr. Chudkowski copies you on this</p>

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<p style="text-align: right;">Page 292</p> <p>1 letter, correct?</p> <p>2 A. Yes.</p> <p>3 Q. He copies Dr. Hopkins, correct?</p> <p>4 A. Right.</p> <p>5 Q. And copies Mr. Ashton, right?</p> <p>6 A. Yes.</p> <p>7 Q. The same Mr. Ashton who received that</p> <p>8 report in 1960 that we just looked at where</p> <p>9 tremolite was reported in J&J's talc, correct?</p> <p>10 A. On that table as stated in the</p> <p>11 document, yeah.</p> <p>12 Q. Right. In the table that said</p> <p>13 Johnson & Johnson shelf product, correct?</p> <p>14 MS. BROWN: I object; lacks</p> <p>15 foundation.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And who is this Mr. John</p> <p>18 McKeegan?</p> <p>19 A. I know he was an employee of, I</p> <p>20 believe of the consumer products company, but I</p> <p>21 don't recall him.</p> <p>22 Q. John McKeegan was the manager of</p> <p>23 communications for Johnson & Johnson at this time.</p> <p>24 Do you remember that?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 294</p> <p>1 A. I'm a little bit lost here. Okay. I</p> <p>2 got it.</p> <p>3 Q. It says, "Skillman, 6, February" --</p> <p>4 it says, "Skillman 6 Feb 98," right?</p> <p>5 A. Yes.</p> <p>6 Q. And the meeting was scheduled to take</p> <p>7 place on February 6, 1998, in Skillman, right?</p> <p>8 A. Yes.</p> <p>9 Q. And it says, "Please notify John</p> <p>10 Pierre Grange," and there's a document attached</p> <p>11 which is J.P. Grange, to, others, and it also copies</p> <p>12 Mr. Zazenski, and others.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Okay. And this document that we're</p> <p>16 looking at has an Imerys stamp on the bottom right.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And the document from</p> <p>20 Mr. Grange has a heading that says, "Johnson &</p> <p>21 Johnson - Mesothelioma Case."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it reads, "John O'Shaughnessy,</p> <p>25 lawyer in charge" --</p>
<p style="text-align: right;">Page 293</p> <p>1 MS. BROWN: Foundation.</p> <p>2 BY MR. BLOCK:</p> <p>3 Q. All right. And then let's look at</p> <p>4 the attachment here.</p> <p>5 MS. BROWN: Hold on, counsel. I have</p> <p>6 an objection to this because it's certainly not the</p> <p>7 attachment because they have been produced from</p> <p>8 different companies. So it looks like you or</p> <p>9 someone on your team has taken two J&J produced</p> <p>10 documents and paired it with an Imerys produced</p> <p>11 document.</p> <p>12 I'm going to object to the Imerys</p> <p>13 produced document on work product grounds pursuant</p> <p>14 to the joint defense of the talc litigation, similar</p> <p>15 to the same objection I made on Exhibit 15.</p> <p>16 MR. BLOCK: Okay. Let me make clear</p> <p>17 what I was referring to.</p> <p>18 BY MR. BLOCK:</p> <p>19 Q. Now, this letter that Mr. Chudkowski</p> <p>20 sent refers to a February 6, 1998, meeting to take</p> <p>21 place at Johnson & Johnson, correct?</p> <p>22 A. Correct.</p> <p>23 Q. If we look at the next page of the</p> <p>24 exhibit, 15B, at the top the date is the same,</p> <p>25 correct, February 6, 1998, right?</p>	<p style="text-align: right;">Page 295</p> <p>1 MS. BROWN: I'm sorry to interrupt,</p> <p>2 but, your Honor, we are going to assert work product</p> <p>3 over these Imerys produced documents regarding joint</p> <p>4 defense of these cases.</p> <p>5 Could we discuss that at a sidebar,</p> <p>6 please, and get a ruling on this document?</p> <p>7 SPECIAL MASTER: Let's go to sidebar.</p> <p>8 MS. BROWN: Thank you, your Honor.</p> <p>9 (Sidebar.)</p> <p>10 MR. BLOCK: Your Honor, is everyone</p> <p>11 in the room?</p> <p>12 SPECIAL MASTER: I think it would be</p> <p>13 helpful, one, to understand whether J&J has seen</p> <p>14 this particular document before. Is this the first</p> <p>15 time you're seeing it, and the circumstances</p> <p>16 regarding the production of the document.</p> <p>17 MR. BERNARDO: Your Honor, I'm going</p> <p>18 to be at Miss Brown's computer here because we're</p> <p>19 all in the same room and we'll get feedback if I log</p> <p>20 on separately, but... your Honor, there are millions</p> <p>21 of pages of documents produced in this litigation.</p> <p>22 There are millions or there are numerous different</p> <p>23 proceedings with different companies producing</p> <p>24 different documents.</p> <p>25 It is a literal impossibility to be</p>

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<p style="text-align: right;">Page 296</p> <p>1 on top of what every other company has produced. I 2 personally have not seen this before, which I 3 understand is not dispositive. I may be wrong and 4 Mr. Block will correct me if I am. I have a 5 reasonable and good faith belief that we have not 6 seen this. 7 But, your Honor, a third party with 8 whom we would share a joint defense or common 9 interest privilege simply cannot waive that on 10 behalf of another party. And the idea that Johnson 11 & Johnson could somehow know what litigation Imerys 12 is in and actively claw that back is not realistic 13 in this type of a mass tort proceeding. That's why 14 we're raising this. 15 Again, I certainly could not 16 personally have knowledge of every document produced 17 everywhere, but I can say that I have not seen it. 18 I know Miss Brown has tried a number of these 19 cases -- 20 MS. BROWN: I have not seen it. 21 SPECIAL MASTER: I accept your 22 representation that subjectively neither of you have 23 seen this document before, but what were the 24 circumstances regarding the production of this 25 document? Mr. Block got it somehow.</p>	<p style="text-align: right;">Page 298</p> <p>1 litigation years ago and it was made to Johnson & 2 Johnson years ago. 3 SPECIAL MASTER: Do we know in what 4 case -- hold on, please. Do we know in what case it 5 was produced? 6 MR. BLOCK: The original -- Moshe 7 could talk about it. I think the Sabatelli case was 8 the original case in which the productions from both 9 companies were made. 10 But let's also keep in mind, your 11 Honor, a few things. Imerys, Luzenac, Cyprus, all 12 those related companies, they were not a defendant 13 in Coker. So that's just one issue. 14 But in terms of modern day, 2017 to 15 present, they have been codefendants. So the idea 16 that we could have an Imerys-stamped document and be 17 able to find it and Johnson & Johnson could not is 18 completely inconceivable. And the obligation would 19 be on Johnson & Johnson, upon receiving the Imerys 20 production, to simply put in the names of their 21 lawyers into the production, including the key 22 lawyer in the litigation, John O'Shaughnessy, and 23 find out if Imerys produced any of those documents, 24 and if they thought they could take some action to 25 claw back a document another party produced to do</p>
<p style="text-align: right;">Page 297</p> <p>1 MR. BLOCK: Yeah, your Honor, since 2 I'm the proponent of the document, I feel that I'd 3 like to give you, you know, what happened here. And 4 Mr. Maimon, my partner, you know, he's been 5 litigating the J&J and Imerys cases since 2017, and 6 he received the original productions from J&J and 7 Imerys and all subsequent productions, and he taught 8 me everything I know. 9 So I will say this, your Honor, both 10 sides have very sophisticated databases. And just 11 ask Mr. Bernardo and he'll tell you, okay, the 12 productions are put into a database. We have a 13 database, they have a database, and all you do is 14 search the name O'Shaughnessy. That's all you do. 15 And so our Imerys, we have our Imerys 16 documents in the database, we have our Johnson & 17 Johnson documents in the database. They have all 18 their talc productions in their own database, which 19 is probably better than ours, and you search the 20 name O'Shaughnessy and you could find all the 21 documents. It's not hard. I did it all myself. 22 SPECIAL MASTER: The question, 23 please. 24 MR. BLOCK: So, your Honor, the 25 Imerys production was made to plaintiffs in the talc</p>	<p style="text-align: right;">Page 299</p> <p>1 so. And they have never made any effort to claw 2 back this document because the lawyers here are 3 claiming they never saw it. And if they never saw 4 it, it's because they never did the proper searches 5 of the name O'Shaughnessy in their Imerys 6 production. But I'll defer to Mr. Maimon on the 7 production. 8 MR. MAIMON: Yes, your Honor. 9 SPECIAL MASTER: Can I ask a 10 question, please? 11 Mr. Block, you referred to a database 12 of documents. Are -- do J&J and plaintiffs have 13 access to the same database or does each have their 14 own proprietary system. 15 MR. BLOCK: We have access to the 16 same documents to the extent they're produced in 17 litigation by parties, but we have our own 18 proprietary databases; however, they operate 19 similarly in that when the documents are produced by 20 parties, metadata, it comes with metadata, so that 21 when it goes in the database you have the date of 22 the document, it contains information such as who 23 the custodian of the document was, and, I mean, you 24 know, it's kind of like Google, you know, once it's 25 in the data --</p>

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<p style="text-align: right;">Page 300</p> <p>1 SPECIAL MASTER: My question --</p> <p>2 MR. BLOCK: -- you put the word in</p> <p>3 and search it.</p> <p>4 SPECIAL MASTER: My question was, I</p> <p>5 take it from what you're saying that you don't share</p> <p>6 a database, right?</p> <p>7 MR. BLOCK: Right, we don't. I mean,</p> <p>8 you know, they could search their database right now</p> <p>9 and I'm sure they'll find this document.</p> <p>10 SPECIAL MASTER: Okay. Before we</p> <p>11 turn to the other gentleman, one more area of</p> <p>12 inquiry. Can you, can you help me understand the</p> <p>13 relationship in the litigation between Imerys and</p> <p>14 J&J because, you know, there's a couple of legal</p> <p>15 steps that J&J has to overcome, they're arguing the</p> <p>16 community of interest privilege. You know I've</p> <p>17 written on that issue several times. The interest</p> <p>18 of the parties who hold the privilege has to be</p> <p>19 coextensive. I don't know if Imerys and J&J have</p> <p>20 coextensive interests. I don't know if they made</p> <p>21 claims against each other in the case.</p> <p>22 So can you help me understand their</p> <p>23 relationship in the litigation? I know Imerys is in</p> <p>24 bankruptcy, but supposedly, presumably, there was a</p> <p>25 time when they were in the litigation together and</p>	<p style="text-align: right;">Page 302</p> <p>1 Honor.</p> <p>2 There are two cases in New Jersey</p> <p>3 State Court in which we received productions from</p> <p>4 Imerys as a defendant in those cases. One was a</p> <p>5 wrongful death case called "Sabatelli," that was the</p> <p>6 first case that we filed, and both Imerys as well as</p> <p>7 Johnson & Johnson produced documents to us.</p> <p>8 They did it in the format that</p> <p>9 Mr. Block had described in producing documents that</p> <p>10 were not only in PDFs, but also in a format that</p> <p>11 they could be loaded into a database and were</p> <p>12 automatically word searchable so that if you put in</p> <p>13 any name, any word, you would get all the documents</p> <p>14 that had that name or word in it.</p> <p>15 And not only is it clear that nobody</p> <p>16 searched the database for Mr. O'Shaughnessy's name</p> <p>17 when they got it or in the three plus years, almost</p> <p>18 four years now since the documents have been</p> <p>19 produced, but in preparation for the deposition also</p> <p>20 they could have taken a look and see well, where's</p> <p>21 Mr. O'Shaughnessy listed, and if they had any</p> <p>22 objections they could have raised those also and</p> <p>23 that's the opportunity.</p> <p>24 In addition to the State Court</p> <p>25 proceedings in which both Johnson & Johnson and</p>
<p style="text-align: right;">Page 301</p> <p>1 I'm just, I need to know whether their interests are</p> <p>2 coextensive in the litigation.</p> <p>3 MR. BLOCK: Your Honor, in 1998 --</p> <p>4 MR. BERNARDO: I think that's a</p> <p>5 question for Johnson & Johnson.</p> <p>6 MR. BLOCK: Well, I think in 1998,</p> <p>7 your Honor, it's undisputed, it's undisputed that</p> <p>8 Luzenac, the predecessor to Imerys, was not a</p> <p>9 defendant in the Coker case, was never a defendant</p> <p>10 in the Coker case.</p> <p>11 So when Mr. O'Shaughnessy was writing</p> <p>12 them letters, like Exhibit 15 that we looked at,</p> <p>13 when he was having meetings with them in 1998 which</p> <p>14 was memorialized in this Imerys memo, Luzenac was</p> <p>15 not a codefendant. And to my knowledge in 1998,</p> <p>16 there was no joint defense agreement that had been</p> <p>17 signed that would memorialize any joint defense.</p> <p>18 And I think Mr. Bernardo would have</p> <p>19 something to say about modern times, you know, maybe</p> <p>20 from 2017 to present, but I think it's undisputed</p> <p>21 what I just said regarding the time of the document</p> <p>22 we're looking at, 1998.</p> <p>23 SPECIAL MASTER: Okay. Why don't we</p> <p>24 hear from your partner and then we'll hear from J&J.</p> <p>25 MR. MAIMON: Yeah, thank you, your</p>	<p style="text-align: right;">Page 303</p> <p>1 Imerys produced these documents, also in the Federal</p> <p>2 MDL, which, as your Honor knows, is overseen by</p> <p>3 Judge Wolfson, they produced a document also</p> <p>4 pursuant to a document production and management</p> <p>5 order whereby the format in which the documents was</p> <p>6 ordered by, I think it was then Magistrate Pisano</p> <p>7 who was overseeing the discovery, and there was a</p> <p>8 discovery order that was entered whereby it was</p> <p>9 recognized that different parties and different law</p> <p>10 firms and different groups of people would want to</p> <p>11 have their own -- had their own database systems in</p> <p>12 their offices and in their firms, but the documents</p> <p>13 as produced had to be accommodatable to each one so</p> <p>14 that even though we don't share a database, so to</p> <p>15 speak, with Mr. Bernardo's firm or Miss Brown's</p> <p>16 firm, the underlying data and the searchability is</p> <p>17 the same for both.</p> <p>18 And just, Mr. Block is correct, that</p> <p>19 Imerys is a successor company to Luzenac, and I</p> <p>20 think that transfer took place somewhere after 2003,</p> <p>21 in which Luzenac sold all of its mining interests to</p> <p>22 Imerys, and Imerys never sold Johnson & Johnson talc</p> <p>23 out of the Vermont mine. That was only Luzenac, the</p> <p>24 predecessor company.</p> <p>25 And before that, Luzenac had</p>

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<p style="text-align: right;">Page 304</p> <p>1 purchased another company called "Rio Tinto" which 2 bought the Vermont mines from Johnson & Johnson in 3 1992, I believe it was. 4 So that's kind of the history of the 5 mining. But in 1998 when this document is being 6 generated, Luzenac is the supplier of the Vermont 7 talc to Johnson & Johnson. They are not a party in 8 litigation. To the best of my knowledge, Luzenac 9 itself was never a party in talc litigation and the 10 only party in talc litigation was eventually Imerys, 11 and that wasn't until 2017, I think, was the 12 earliest case against them on a claim for Johnson & 13 Johnson talc. 14 SPECIAL MASTER: We're going to hear 15 from Johnson & Johnson, so, Mr. Bernardo, please 16 just be patient, you'll get an opportunity to say 17 whatever you want. 18 MR. BERNARDO: Thank you, your Honor. 19 SPECIAL MASTER: Counsel, in your 20 question, in your mind and in Mr. Block's mind, is 21 there any reasonable question that J&J had 22 possession of this document for years before today, 23 even if counsel in this case were not subjectively 24 aware of this document? 25 MR. MAIMON: That would be an</p>	<p style="text-align: right;">Page 306</p> <p>1 so, because I can't think of another witness who we 2 would use this document with. I mean, it involves 3 John O'Shaughnessy and, you know, it's not a 4 document -- it involves a meeting he was present at, 5 and I don't think there would be another witness 6 that this would be used with, but, of course, I 7 don't know about every proceeding, you know, 8 deposition, trial, you know, around the country that 9 we tried mesothelioma cases, so... 10 SPECIAL MASTER: Mr. Block, I'm going 11 to get to J&J, but I just want to get these 12 questions answered. This particular document, 13 February 6, 1998, document, in your view, is it 14 substantially similar to the content that's 15 contained in the April 16, 1998, letter that's part 16 of Exhibit 15? 17 MR. BLOCK: It's similar in that in 18 the earlier Exhibit 15, starting on page 2, 19 Mr. O'Shaughnessy is reaching out to Mr. Grange, 20 he's telling him what he wants to know, actually 21 page 1 is Mr. Grange's response, and that's in the 22 record here. And, you know, in this exhibit, you 23 know, we have the meeting being set up by Johnson & 24 Johnson and then clearly the next page is from the 25 Imerys production and it's Imerys', you know,</p>
<p style="text-align: right;">Page 305</p> <p>1 impossibility because the productions are done 2 pursuant to court order and they're done to all 3 parties, and so it's an impossibility; unless 4 somebody in a nefarious and criminal act excised 5 this document from the production that went 6 specifically to Johnson & Johnson, and I don't know 7 how that would technically be done, but unless 8 somebody did that to excise this document from the 9 production, and I don't think that's technologically 10 feasible, it is an impossibility that we received a 11 document from Imerys that Johnson & Johnson did not. 12 And it's the same impossibility that 13 Johnson & Johnson had a joint defense with Luzenac 14 because Luzenac was not a defendant in any case. 15 SPECIAL MASTER: In your best 16 judgment, how long ago was this document produced? 17 MR. MAIMON: Probably on the order of 18 three plus years. 19 SPECIAL MASTER: And to the best of 20 your knowledge and Mr. Block's knowledge, is this 21 the first time that this document has been attempted 22 to be used in connection with litigation either at 23 trial or at a deposition? 24 MR. BLOCK: The answer -- your Honor, 25 I believe so. I mean, I don't know, but I believe</p>	<p style="text-align: right;">Page 307</p> <p>1 recitation of what occurred at the meeting and they 2 produced that document to us and they produced it to 3 J&J. 4 MR. MAIMON: If you look, it's all 5 part of the same communication because if you look 6 at Exhibit 15, your Honor, the last page is Bates 7 Number 209397, and if you look at Exhibit 15B, the 8 February 6, 1998, memo is the next sequential Bates 9 page, it's 209 -- 10 SPECIAL MASTER: I'm sorry, could you 11 run that by me again? I lost you there. 12 MR. MAIMON: Sure. If you look at 13 page, at Exhibit 15 -- 14 SPECIAL MASTER: 15, I have it. 15 MR. MAIMON: It's the April 16, 1998, 16 letter. 17 SPECIAL MASTER: That's Bates stamp 18 23 -- 9397 and then -- 19 MR. MAIMON: Well, the next 20 sequential one. And so within the production, these 21 are all, I mean, I don't have the metadata in front 22 of me, but if you're looking at one, the very next 23 page is Exhibit 15B. 24 SPECIAL MASTER: Okay. Why don't we 25 go to J&J.</p>

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<p style="text-align: right;">Page 308</p> <p>1 MR. BERNARDO: Thank you, your Honor.</p> <p>2 Let me first address the common</p> <p>3 interest issue, and let me preface my comment by</p> <p>4 saying I think the person who would be able to</p> <p>5 contribute facts, some of which may be privileged,</p> <p>6 that would best support this is sitting in the other</p> <p>7 room, and I would invite your Honor to discuss that</p> <p>8 with Mr. O'Shaughnessy. Because it's our</p> <p>9 understanding that for years going back, Johnson &</p> <p>10 Johnson and Imerys and Luzenac and successors and</p> <p>11 predecessors were all reasonably anticipating</p> <p>12 litigation or working in a common interest and were</p> <p>13 communicating with each other with the expectation</p> <p>14 of that common interest privilege.</p> <p>15 The fact that Imerys or Luzenac was</p> <p>16 not a defendant in the Coker matter is irrelevant.</p> <p>17 That's simply a single lawsuit. And as I think your</p> <p>18 Honor is aware, there were a number of lawsuits, not</p> <p>19 just the type that we're here talking about today</p> <p>20 alleging mesothelioma, but there were lawsuits with</p> <p>21 respect to industrial talc, there were lawsuits</p> <p>22 involving other claims besides mesothelioma.</p> <p>23 So to say that Johnson & Johnson and</p> <p>24 Luzenac shared a common interest and that</p> <p>25 Mr. O'Shaughnessy would have expected that that</p>	<p style="text-align: right;">Page 310</p> <p>1 lawsuit. It cannot be --</p> <p>2 SPECIAL MASTER: Mr. Bernardo, but</p> <p>3 with all due respect, and I say this with the utmost</p> <p>4 respect, isn't that why Skadden, Arps was hired?</p> <p>5 Because there appears, from the productions that</p> <p>6 I've seen, that there were production of work</p> <p>7 product documents in the past.</p> <p>8 So Skadden, Arps was retained</p> <p>9 apparently, I'm surmising this, to make sure that</p> <p>10 all the productions are consistent and all the</p> <p>11 document issues are straightened out.</p> <p>12 So is there any reasonable -- I</p> <p>13 accept your representation and co-counsel's</p> <p>14 representation that you and her were not</p> <p>15 subjectively aware of this particular document.</p> <p>16 That's a given. We'll accept that.</p> <p>17 But is there any legitimate question,</p> <p>18 any reasonable question that this document was not</p> <p>19 in J&J's database for years?</p> <p>20 MR. BERNARDO: Your Honor, I can</p> <p>21 honestly say I don't know the answer to that. And</p> <p>22 to answer your first question most directly, you're</p> <p>23 exactly right. Among the reasons, and I would like</p> <p>24 to say there are many, not just that, that Skadden,</p> <p>25 Arps was retained here, and I've stated that before</p>
<p style="text-align: right;">Page 309</p> <p>1 common interest would have protected this is an</p> <p>2 understatement. But again, I would invite your</p> <p>3 Honor to speak with Mr. O'Shaughnessy about that.</p> <p>4 I next want to address the issue of</p> <p>5 databases. And I don't disagree with a lot of the</p> <p>6 statements that Mr. Block and Mr. Maimon</p> <p>7 made -- stated, your Honor. I'm interested to know</p> <p>8 that they seem to know so much about how we maintain</p> <p>9 our documents, and I'm also interested to know,</p> <p>10 given the number of questions that I've received</p> <p>11 from Mr. Block's firm about what was produced when</p> <p>12 and what the current status of it is, that he would</p> <p>13 suggest that we're that much more on top of the</p> <p>14 documents.</p> <p>15 Your Honor, to state again, an</p> <p>16 understatement, this is the, a veritable paper</p> <p>17 chase. There are documents produced by Imerys.</p> <p>18 There are documents that were produced by other</p> <p>19 manufacturers, because a lot of times in these cases</p> <p>20 there are other manufacturers of other products.</p> <p>21 There are documents that are produced by retailers.</p> <p>22 There are documents that are produced in connection</p> <p>23 with dozens of third-party Subpoenas.</p> <p>24 Your Honor, again, I cannot overstate</p> <p>25 the volume and number of document production in this</p>	<p style="text-align: right;">Page 311</p> <p>1 in open court, was to make reasonable efforts to</p> <p>2 manage the documents produced by Johnson & Johnson,</p> <p>3 not to manage the documents produced by others.</p> <p>4 And as Mr. Block states, whether you</p> <p>5 can or cannot query a document to see if</p> <p>6 Mr. O'Shaughnessy's name is on it, as your Honor</p> <p>7 knows, there are dozens if not hundreds of documents</p> <p>8 that Mr. O'Shaughnessy's name is on that the J&J</p> <p>9 defendants do not claim as privileged.</p> <p>10 So what your Honor would be</p> <p>11 suggesting is the imposition of a burden, otherwise</p> <p>12 a risk of labor, on a defendant to do a privileged</p> <p>13 analysis of every other company's document</p> <p>14 production, and that's simply not the obligation</p> <p>15 that Johnson & Johnson has to reasonably manage its</p> <p>16 documents.</p> <p>17 And that's separate, your Honor, from</p> <p>18 the issue --</p> <p>19 SPECIAL MASTER: Well, I have to</p> <p>20 respectfully disagree with you on that.</p> <p>21 MR. BERNARDO: Understood, your</p> <p>22 Honor.</p> <p>23 SPECIAL MASTER: I have to</p> <p>24 respectfully disagree that in a litigation with</p> <p>25 billions of dollars at stake with cases all over the</p>

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<p style="text-align: right;">Page 312</p> <p>1 country, the target defendant doesn't have a 2 responsibility or duty, however you want to describe 3 it, to be up to date on the status of the document 4 production of related parties or defendants in the 5 case, especially, especially someone with -- it's 6 claiming it has a community of interest with. 7 Let me ask you this question, 8 Mr. Bernardo. We can continue this deposition. Can 9 you get on the phone and ask your document 10 production to check right now if they did a search 11 for this document, is it in J&J's database? 12 MR. BERNARDO: I am happy to make 13 that inquiry, your Honor. 14 MR. BLOCK: And, your Honor, I just 15 want to add something we -- we just, we confirmed on 16 our end that just because by looking at the Bates 17 number you could tell what production it was from, 18 and our people here advised me that this Bates 19 number is in the Bates number range from the 20 Sabatelli production that was produced to our firm 21 and J&J in 2017, Moshe, right? 22 MR. MAIMON: Yeah. 23 MR. BLOCK: 2017. 24 And by the way, your Honor, all of 25 the databases, and I'm sure Mr. Bernardo would agree</p>	<p style="text-align: right;">Page 314</p> <p>1 position that it is the law that a third party or 2 another party cannot waive Johnson & Johnson's 3 privilege. 4 So with that, I will allow us to move 5 on, and I just wanted to make sure we stated that 6 for the record. 7 SPECIAL MASTER: Let me just say this 8 for the record, too, because I want to be clear on, 9 one, I haven't formally ruled yet, so let me 10 formally rule. 11 My formal ruling is that the 12 objection to the use of this document is overruled 13 for this reason: The document has been produced in 14 related talc litigation. J&J had possession of the 15 document presumably for years. 16 I think it's a fair assumption that 17 if the database had been searched for O'Shaughnessy 18 documents, this document would have or should have 19 been revealed. I don't doubt that perhaps there's a 20 significant number of documents to deal with in this 21 case. There's no question about that. 22 But given the stakes in the case and 23 the significance of the issues we're talking about, 24 I don't think it's unreasonable to expect that J&J 25 would have knowledge of this document not only in</p>
<p style="text-align: right;">Page 313</p> <p>1 with this, all you do is, if you just put in the 2 Bates number, you could find the document. I mean, 3 you know -- 4 SPECIAL MASTER: In fairness, I would 5 assume that that's the case, in fairness, Mr. Block, 6 but you don't know and I don't know -- 7 MR. BLOCK: Okay. 8 SPECIAL MASTER: -- how J&J works 9 its -- 10 MR. BLOCK: Okay. 11 SPECIAL MASTER: -- database. 12 MR. BERNARDO: And, your Honor -- 13 SPECIAL MASTER: Mr. Bernardo, can I, 14 let me just cut to the chase. 15 MR. BERNARDO: I was going to say 16 I'll stipulate that we have this document and I 17 would suspect if somebody does a search we'll be 18 able to find it. 19 SPECIAL MASTER: Right. Okay. 20 MR. BERNARDO: I'm not quibbling over 21 that, your Honor. And I take your Honor's ruling. 22 We respectfully disagree, but I take your Honor's 23 ruling. And I would simply make one last point just 24 to cut through this, which is, regardless of what 25 we've been discussing, it's the J&J defendant's</p>	<p style="text-align: right;">Page 315</p> <p>1 preparation for this deposition today, but even 2 years before that. 3 And I know J&J disagrees and we can 4 respectfully disagree with that, but I do think that 5 it clearly reveals information that ordinarily would 6 not be, may not be discoverable. 7 But I think that given the knowledge 8 that J&J had, it had an obligation or duty to move 9 to claw back the document. It didn't do that. So 10 if there was any privilege or work product 11 protection that applied to the document, it's been 12 waived. 13 So I do believe that plaintiff can 14 question about this document, but I want to make the 15 same proviso I made yesterday and I will continue to 16 make, I am not, I am not ruling that there is a 17 subject matter waiver. 18 So I'm not opening the door for 19 Mr. Block to question Mr. O'Shaughnessy about all of 20 his strategies and mental impressions and things 21 like that. I'm only saying that this particular 22 document, if there was a work product privilege or 23 attorney-client privilege that applied to it, is 24 waived. So that should give you some comfort. So 25 that's my ruling for the record.</p>

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<p style="text-align: right;">Page 316</p> <p>1 MR. BERNARDO: Thank you, your Honor. 2 And as your Honor said, we can 3 respectfully disagree and we do, and I would like an 4 opportunity briefly to discuss this with my 5 colleagues to determine whether we would choose to 6 appeal this ruling, your Honor, if we may. 7 SPECIAL MASTER: I certainly think 8 that's appropriate, and hopefully the technical 9 people can do what they have to do to set that up. 10 MR. BERNARDO: All right. It 11 shouldn't take very long. 12 MR. BLOCK: Yeah, they're together. 13 Should the rest of us just be put back in the main 14 room so we can proceed when the J&J lawyers are done 15 conferring? How do we want to do this most 16 efficiently? 17 MR. BERNARDO: Jerry, it's 10:40. I 18 know we've been dealing with these issues, but I 19 know, if we can have a brief break, maybe that, we 20 can kill two birds with one stone and we can all 21 come back on in five minutes. 22 MR. BLOCK: All right. And just come 23 back into the main room? 24 MR. BERNARDO: Yeah. 25 MS. BROWN: Let's do ten so we can</p>	<p style="text-align: right;">Page 318</p> <p>1 SPECIAL MASTER: And we'll be back 2 hopefully promptly. 3 MR. BLOCK: Thank you so much. 4 MR. BERNARDO: Thank you, your Honor. 5 (Sidebar ends.) 6 (Recess: 10:40 a.m. to 10:51 a.m., 7 Eastern Standard Time.) 8 VIDEOGRAPHER: Going back on the 9 record, 10:51 a.m. 10 This is the beginning of Media Unit 11 2. Okay. 12 MR. BLOCK: Could we have the last 13 two questions and the last two answers read back so 14 we could just remember where we were? 15 MS. BROWN: Yeah, and just for the 16 record, this is Alli Brown for J&J. We understand 17 the court's ruling as to Exhibit 15 and as to the 18 document we've been discussing, Exhibit 15B, and for 19 purposes of these two rulings we intend to proceed 20 pursuant to the court's order here, but reserve our 21 right to re-raise an objection if there is a 22 subsequent document for which plaintiffs claim 23 privilege has been waived by a third-party 24 production of Imerys or others. Thanks. 25 MR. BLOCK: Go ahead, Andrea, please.</p>
<p style="text-align: right;">Page 317</p> <p>1 give John a break. 2 MR. BERNARDO: Yeah. 3 MR. BLOCK: Your Honor, your Honor, 4 I'm not saying -- I know everyone is doing their 5 best and acting in the utmost good faith and I -- 6 SPECIAL MASTER: I gotcha, I gotcha, 7 I gotcha, Mr. Block, I know what you're going to 8 say. We'll deal with the issue. 9 MR. BLOCK: Yeah, yeah, yeah. 10 SPECIAL MASTER: We'll see where we 11 are later this afternoon. 12 MR. BLOCK: Yeah. You saw that I was 13 primed and ready at 9:30. I even cut down a number 14 of my exhibits and what we just had here was we had 15 a company that, you know, objected, you know, to a 16 document they've had for three years -- actually we 17 discovered it was produced in the Lanzo trial, this 18 document, where Imerys and Johnson & Johnson were a 19 defendant. And so, you know, this took a long time, 20 you know, to deal with a document that J&J has had 21 for three years, and, you know, we're just not 22 getting a lot of testimony. 23 SPECIAL MASTER: Okay. Let's take 24 the break that we talked about. 25 MR. BLOCK: Right, thank you.</p>	<p style="text-align: right;">Page 319</p> <p>1 Do we have the judge? 2 SPECIAL MASTER: Yes. 3 MR. BLOCK: Go ahead, Andrea, please. 4 Thank you. 5 (The following Questions and Answers 6 are read back: 7 "QUESTION: And this document that 8 we're looking at has an Imerys stamp on the bottom 9 right. 10 "Do you see that? 11 "ANSWER: Yes. 12 "QUESTION: Okay. And the document 13 from Mr. Grange has a heading that says, 'Johnson & 14 Johnson - Mesothelioma Case.' 15 "Do you see that? 16 "ANSWER: Yes. 17 "QUESTION: And it reads, 'John 18 O'Shaughnessy, lawyer in charge'-- 19 "MS. BROWN: I'm sorry to interrupt, 20 but, your Honor, we are going to assert work 21 product...") 22 BY MR. BLOCK: 23 Q. Mr. O'Shaughnessy, looking at 24 Exhibit 15B, the memo from Mr. Grange from Luzenac 25 regarding the February 6, 1998, meeting in Skillman,</p>

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<p style="text-align: right;">Page 320</p> <p>1 New Jersey, states, "John O'Shaughnessy, lawyer in 2 charge of J&J's liability litigation, told me the 3 following." 4 Do you see that? 5 A. I do. 6 Q. It says, "J&J is sued by a lady from 7 Texas who suffers from a mesothelioma. This is a 8 rare cancer of the pleura, specific to asbestos 9 exposure." 10 Do you see that? 11 A. I do. 12 Q. And it says, "She claims that the 13 body powder was containing asbestos on the base of 14 an asbestos analyze performed by a lab on a tin of 15 body powder." 16 Do you see that? 17 A. Yes. 18 Q. And it says, "John is requesting our 19 help to solve the case." 20 Is that what it says? 21 A. Yes. 22 Q. And at the bottom it says, 23 "Mr. Grange from Luzenac says, our contribution to 24 solving their case would support Luzenac's image of 25 reliable partner and supplier as opposed to China of</p>	<p style="text-align: right;">Page 322</p> <p>1 Q. All right. And then a week later on 2 February 13, 1998, John McKeegan from J&J Corporate 3 e-mails two people, one is Dr. John Hopkins, and the 4 other is you, John O'Shaughnessy, correct? 5 A. Yes. 6 Q. And the subject of his e-mail is 7 talc, correct? 8 A. Correct. 9 Q. And his e-mail starts out by saying, 10 "FYI Irene Malbin of the CTFA has gotten a call from 11 CBS Morning News." 12 Do you see that? 13 A. I do. 14 Q. And at the bottom it says, "We have 15 not gotten a call from CBS yet, but we should be 16 prepared in case we need to tweak our statement at 17 all." 18 Do you see that? 19 A. Yes. 20 Q. And it says, "If you could each call 21 me next week, we can talk more about what we know 22 and what we may need to do." 23 Is that what it says? 24 A. Yes. 25 Q. It says, "Thanks. The most recent</p>
<p style="text-align: right;">Page 321</p> <p>1 Australia." 2 Do you see that? 3 A. I do. 4 Q. Now, looking at Exhibit 16, you see, 5 sir, that I'm showing an e-mail, Exhibit 16, from 6 John McKeegan from Johnson & Johnson Corporate? 7 A. Yes. 8 Q. And this e-mail is one week after the 9 meeting you had with Luzenac requesting their help 10 in that case, correct? 11 A. It's one week after that memo, yes. 12 Q. Right. One week after the meeting in 13 Skillman with Luzenac where you asked for their help 14 in the Coker case, right? 15 A. I don't recall the meeting, but 16 that's what that memo says. I don't know if I was 17 there or participated by phone. I don't recall it, 18 but your timing is right. 19 Q. Right. Okay. Just to be clear, you 20 were cc'd on the letter to Luzenac setting up the 21 meeting on February 6, 1998, that referred to 22 Mr. John Pierre Grange, and then Mr. Grange has the 23 memo from February 6, 1998, saying what you said at 24 the meeting, right? 25 A. In part, yeah.</p>	<p style="text-align: right;">Page 323</p> <p>1 statement is attached." 2 Do you see that? 3 A. Yes. 4 Q. And if we go to the statement on 5 talcum powder that is attached, let me ask you about 6 the first sentence, please. Turn the page. 7 Do you see that? 8 A. I do. 9 Q. And it says, "Statement on Talcum 10 Powder. Johnson's Baby Powder has been used safely 11 for more than 100 years. It contains pure, high 12 grade cosmetic talc that is free of impurities and 13 is not carcinogenic." 14 Is that what it says? 15 A. Yes. 16 Q. And Mr. McKeegan, in his e-mail, is 17 only writing two people at Johnson & Johnson to ask 18 if this statement is appropriate, correct? 19 MS. BROWN: Objection; lacks 20 foundation; misstates the document. 21 A. Well, three actually; Jeff Leebaw is 22 also on it. 23 Q. Jeff Leebaw is copied, right? 24 A. Yes. 25 Q. And, but he's sending it to, in the</p>

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<p style="text-align: right;">Page 324</p> <p>1 "To" column, only to you and Dr. Hopkins, and he is 2 asking each of you to call him next week to talk 3 about it, right? 4 A. Yes. 5 Q. And there is no reference in this 6 e-mail to any lawsuit, is there? 7 A. There is not, but they know that the 8 corporate communications people know that these 9 communications that the company makes, public 10 statements that they make do show up in lawsuits, do 11 become the subject of the lawsuits, and that's why 12 I'm copied. 13 Q. Move to strike everything after the 14 word "not." 15 Sir, do you know, do you know a 16 person named Dick Wiles? 17 A. I do. 18 Q. And who is Dick Wiles? 19 A. Dick Wiles was an attorney in Texas 20 who was retained for Johnson & Johnson work. 21 Q. Including on the Coker case, correct? 22 A. Apparently, yeah. 23 Q. Who is John Ship? 24 A. I don't know. I don't recognize the 25 name.</p>	<p style="text-align: right;">Page 326</p> <p>1 A. Yeah, I'm thinking that -- Dick Wiles 2 handled litigation for us in Texas, and I'm thinking 3 the Coker case was a Texas case so we might have 4 retained Dick, Mr. Wiles, early, and then brought in 5 Gene Williams, I'm not sure, but I think that's 6 maybe what happened here. 7 Q. And Gene Williams was from Mehaffy & 8 Weber, correct? 9 A. Yeah, yes, he was. 10 Q. All right. For the time that Dick 11 Wiles and John ship, for the time that their law 12 firm was working on the Coker case, they reported to 13 you as the attorney from Johnson & Johnson managing 14 the Coker case, correct? 15 A. Correct. 16 Q. And have you seen this memo before? 17 A. I've seen it recently, yes. 18 Q. How recently? 19 A. With my attorneys. 20 Q. Okay. Looking at this memo dated 21 October 16, 1997, it's in regards to Coker versus 22 Johnson & Johnson, correct? 23 A. Yes. 24 Q. And the subject says, 25 "Mesothelioma/Talc Medical Research," correct?</p>
<p style="text-align: right;">Page 325</p> <p>1 Q. Who is Lenore McKenna? 2 A. I don't know. 3 Q. Let's go to Exhibit 19 to your 4 deposition. We're going to skip forward to Exhibit 5 19. 6 Do you see that Exhibit 19 is a memo 7 written from Lenore McKenna to Dick Wiles and John 8 Shipp? 9 Do you see that? 10 A. Yes. 11 Q. And you just acknowledged that Dick 12 Wiles was one of the lawyers in Texas for Johnson & 13 Johnson in the Coker case, correct? 14 A. Yes, and I believe John ship and 15 Lenore McKenna were with his office. 16 Q. Okay. And what office is that? 17 A. Dick Wiles' firm, I forget the name. 18 Q. Was it Mehaffy & Weber or another law 19 firm in Texas? 20 A. No, it was a different law firm in 21 Texas. 22 Q. All right. And the memo -- strike 23 that. 24 And these attorneys reported to you 25 in the Coker case, correct?</p>	<p style="text-align: right;">Page 327</p> <p>1 A. Yes. 2 Q. Not legal research, right? 3 A. Done by a lawyer, though. 4 Q. But the words are "medical research," 5 right? 6 A. Yes. 7 Q. Okay. And looking at this memo, one 8 of the things it says is that asbestos is divided 9 into two main classes: The serpentines, chrysotile, 10 and amphiboles, crocidolite, amosite, anthophyllite, 11 tremolite, and actinolite. 12 Is that what it says? 13 A. Yes, that's what it says. 14 Q. And it says, "The association between 15 asbestos and both pleural and peritoneal 16 mesothelioma has clearly been established since the 17 1960s." 18 Is that what it says? 19 A. It does, yes. 20 Q. Another thing it says is that, 21 "Mesothelioma may occur after brief or indirect 22 exposure to asbestos." 23 You see that? 24 A. I am skipping. Yes. 25 Q. And it refers to a latency period for</p>

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<p style="text-align: right;">Page 328</p> <p>1 mesothelioma.</p> <p>2 Do you see that word, "latency</p> <p>3 period"?</p> <p>4 A. It's in the document, yeah.</p> <p>5 Q. Okay. And you understand latency</p> <p>6 period refers to the fact that if you're exposed to</p> <p>7 asbestos, you may not develop mesothelioma until</p> <p>8 decades later?</p> <p>9 MS. BROWN: Objection; foundation.</p> <p>10 A. I would defer to someone with more</p> <p>11 technical expertise than me as to the meaning.</p> <p>12 Q. And this memo that was done in</p> <p>13 October of 1997 for this law firm working on the</p> <p>14 Coker case for Johnson & Johnson has a section that</p> <p>15 says, "Talc," right?</p> <p>16 A. Yes.</p> <p>17 Q. And it states here, "In several</p> <p>18 mesothelioma patients studied, both talc fibers and</p> <p>19 tremolite were detected."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And it says, "In fact, the majority</p> <p>23 of asbestos bodies isolated from the lungs of women</p> <p>24 in the general population have tremolite or</p> <p>25 anthophyllite and because tremolite and</p>	<p style="text-align: right;">Page 330</p> <p>1 A. Yes.</p> <p>2 Q. Because you were the lawyer that was</p> <p>3 managing the Coker case, this memo would have been</p> <p>4 sent to you by Dick Wiles and John Shipp's law firm,</p> <p>5 correct?</p> <p>6 MS. BROWN: Objection; lacks</p> <p>7 foundation; calls for speculation.</p> <p>8 A. Not necessarily, no. To me it looks</p> <p>9 like an internal backgrounder that the lawyers</p> <p>10 created.</p> <p>11 Q. This document, sir, was produced by</p> <p>12 Johnson & Johnson. Do you see the Bates stamp at</p> <p>13 the bottom that says J&J?</p> <p>14 A. I do.</p> <p>15 Q. Just to be clear, are you saying that</p> <p>16 this memo, Exhibit 19, dated October 16, 1997, that</p> <p>17 we're looking at here, was not sent to you in</p> <p>18 October of 1997, or that you don't remember?</p> <p>19 A. I don't recall seeing it and so it</p> <p>20 doesn't look like something that the law firms would</p> <p>21 have sent me. I generally don't get memorandum. I</p> <p>22 do a lot of my discussion with lawyers on the phone</p> <p>23 and this might have been for their own use as a</p> <p>24 backgrounder, so I can't say it was sent to me.</p> <p>25 Q. Move to strike the portion that was</p>
<p style="text-align: right;">Page 329</p> <p>1 anthophyllite are known contaminants of talc, this</p> <p>2 data suggests that rare cases of mesothelioma among</p> <p>3 women with no other identifiable exposure might be</p> <p>4 related to exposure to cosmetic talc."</p> <p>5 Is that what it says?</p> <p>6 A. Yes.</p> <p>7 Q. And there's a reference here, it</p> <p>8 says, "2."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And if you go down to reference 2,</p> <p>12 there's a cite to a publication called "Malignant</p> <p>13 Mesothelioma," edited by Douglas W. Henderson and</p> <p>14 others from 1992.</p> <p>15 Do you see that?</p> <p>16 A. No, I'm not finding it. Let me</p> <p>17 just --</p> <p>18 Q. On the last page of the document.</p> <p>19 A. Okay. Last page. Number 2, yes.</p> <p>20 Q. Right. If we go up to the previous</p> <p>21 page at the bottom it also says here, "The outlook</p> <p>22 of malignant mesothelioma is poor with few patients</p> <p>23 living two years; the time from diagnosis to death</p> <p>24 is usually about six months."</p> <p>25 It says that in this memo, correct?</p>	<p style="text-align: right;">Page 331</p> <p>1 not responsive.</p> <p>2 My question is: Is it your testimony</p> <p>3 that this memo was not sent to you in October of</p> <p>4 19 -- sir, I have to finish my question.</p> <p>5 MS. BROWN: Can you just calm down a</p> <p>6 little bit? We're going to --</p> <p>7 MR. BLOCK: Sir, sir, sir, I must be</p> <p>8 able to finish my question.</p> <p>9 A. I know and I apologize, I thought you</p> <p>10 were finished.</p> <p>11 Q. Sir, is it your testimony that this</p> <p>12 memo dated October 16, 1997, was not sent to you in</p> <p>13 October of 1997, or that you just don't remember?</p> <p>14 MS. BROWN: Objection; asked and</p> <p>15 answered.</p> <p>16 A. I don't recall seeing it. I don't</p> <p>17 recall this memo.</p> <p>18 Q. And, sir, can you explain how this</p> <p>19 memo got into the files of Johnson & Johnson if it</p> <p>20 was not sent to you at the time it was created in</p> <p>21 October of 1997?</p> <p>22 MS. BROWN: Objection; foundation;</p> <p>23 speculation.</p> <p>24 A. I don't know, but there's been some</p> <p>25 inadvertent disclosures here from the law firms, so</p>

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<p style="text-align: right;">Page 332</p> <p>1 I can't, you know, I don't know where it came from 2 in the production. 3 Q. Sir, my question for you is: Can you 4 explain how this document got into the files of 5 Johnson & Johnson and was produced by Johnson & 6 Johnson in litigation if it was not sent to you back 7 at the time it was created in October of 1997? 8 MS. BROWN: He's answered that like 9 three times. I object, asked and answered. You're 10 harassing him. 11 MR. BLOCK: Please don't make 12 speaking objections. Let's have the question read 13 back and let's have an answer. 14 MS. BROWN: Please stop asking the 15 same question multiple times. 16 MR. BLOCK: That's another speaking 17 objection. It's against the rules. 18 Please have the question read back 19 and let's have an answer. 20 (The following Question is read back: 21 "QUESTION: Sir, my question for you 22 is: Can you explain how this document got into the 23 files of Johnson & Johnson and was produced by 24 Johnson & Johnson in litigation if it was not sent 25 to you back at the time it was created in October of</p>	<p style="text-align: right;">Page 334</p> <p>1 discussions at all of the committee or at the 2 meetings I attended or phone calls I may have 3 participated in. 4 Q. Let's look at the next exhibit, 5 Exhibit 37. 6 MS. BROWN: John, I think this is the 7 second binder now. 8 MR. BLOCK: Yes, thank you. 9 BY MR. BLOCK: 10 Q. If you could leave the first binder 11 with you as well, we're sort of going out of order, 12 but yes, this is the first one from the second 13 binder, if you could just turn to Exhibit 37 in 14 binder 2, sir. 15 A. Okay. 16 Q. And I want to direct your attention, 17 this is an e-mail chain. I want to direct your 18 attention to the e-mail that you sent on August 13, 19 2001. 20 A. I see it. 21 Q. All right. And just to get a little 22 context, you're responding to an e-mail from 23 August 10, 2001, from Helen Han Hsu, to you, John 24 O'Shaughnessy, and to others, and it says, "Talc 25 conference call minutes."</p>
<p style="text-align: right;">Page 333</p> <p>1 1997?") 2 MS. BROWN: I have the same 3 objection. 4 A. I can't explain. If it was sent to 5 me, I don't know if it was sent to me or not and 6 there was an inadvertent production from the law 7 firm, and so it may have come from there perhaps. I 8 don't know. 9 Q. Move to strike the portion of that 10 answer that was not responsive. 11 Sir, did you ever hear any discussion 12 by J&J's Talc Steering Committee about mesothelioma? 13 MS. BROWN: Objection; vague. 14 A. I don't, I don't recall, you know, 15 specific subjects that came up. Subjects were those 16 that, you know, were headed towards that FDA meeting 17 and the safety of talc, so it might have come up, 18 probably came up, I just don't know. I don't recall 19 that. 20 Q. Your answer is you don't recall any 21 discussions specifically of mesothelioma by J&J's 22 Talc Steering Committee; true? 23 MS. BROWN: I object; asked and 24 answered. 25 A. I don't recall any specific</p>	<p style="text-align: right;">Page 335</p> <p>1 Do you see that? 2 A. Yes, yes. 3 Q. And there's a reference to NTP as it 4 continues to do the review of talc. 5 Do you see that? I have highlighted 6 that on the screen. NTP -- 7 A. Yes, I'm sorry, I'm sorry, I'm 8 looking at the wrong e-mail. 9 Q. All right. And NTP stands for 10 National Toxicology Program, correct? 11 A. That's right. 12 Q. And the National Toxicology Program 13 at this time in 2001 was reviewing talc as a 14 potential carcinogen, correct? 15 A. Yes, I believe so. I kind of get the 16 FDA, NTP and ISR, whatever that meaning was, I kind 17 of conflate them, but that sounds right to me, yeah. 18 Q. Okay. And just looking at this 19 e-mail just to give some context, Helen Han Hsu 20 e-mails you and others, to all, "The CTFA 21 teleconference took place last week. It was 22 unanimous among the task force members that CTFA 23 should work with NTP as it continues to do the 24 review of talc." 25 Do you see that?</p>

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<p style="text-align: right;">Page 336</p> <p>1 A. I do.</p> <p>2 Q. Okay. And you respond -- and Helen</p> <p>3 Han Hsu, was she a scientist for one of the Johnson</p> <p>4 & Johnson companies?</p> <p>5 A. I recognize her name and, but I don't</p> <p>6 know her role at this point.</p> <p>7 Q. Okay. And you respond, "Thanks,</p> <p>8 Helen. I read the minutes, and I think it's crucial</p> <p>9 that we keep in mind that for talc composition, J&J</p> <p>10 has a unique story to tell that is different from</p> <p>11 the other task force members."</p> <p>12 A. Yes.</p> <p>13 Q. Is that what you wrote?</p> <p>14 A. Yes.</p> <p>15 Q. And then you wrote, "J&J, back in the</p> <p>16 '70s, developed proof that its talc was free from</p> <p>17 asbestos."</p> <p>18 Is that what you wrote?</p> <p>19 A. I did.</p> <p>20 Q. And then you wrote, "I have assembled</p> <p>21 those documents and have them."</p> <p>22 Is that what you wrote?</p> <p>23 A. Yes.</p> <p>24 Q. And you said, "Let's consider making</p> <p>25 our story known to NTP apart from the other</p>	<p style="text-align: right;">Page 338</p> <p>1 witnesses and working with our outside counsel and</p> <p>2 assembling documents and having those documents with</p> <p>3 our coordinating counsel as part of our document</p> <p>4 collection, that if they needed them, all that</p> <p>5 information was in one place and through our</p> <p>6 counsel, I could provide those to them.</p> <p>7 Q. All right. Move to strike the</p> <p>8 portion that was not responsive.</p> <p>9 Nothing in this e-mail refers to</p> <p>10 litigation; nothing in your e-mail refers to</p> <p>11 litigation; true or not true?</p> <p>12 A. No, I disagree. I have assembled</p> <p>13 those documents and I did that as part of the</p> <p>14 litigation.</p> <p>15 Q. Your e-mail is referring to NTP,</p> <p>16 correct?</p> <p>17 MS. BROWN: Objection; misstates</p> <p>18 testimony.</p> <p>19 A. It's referring to the talc conference</p> <p>20 call minutes and the NTP meeting, yeah.</p> <p>21 Q. Okay. And let's look at the people</p> <p>22 that you, as a lawyer, were telling the scientists</p> <p>23 that Johnson & Johnson's talc was free of asbestos.</p> <p>24 What scientists are on this e-mail</p> <p>25 that you sent?</p>
<p style="text-align: right;">Page 337</p> <p>1 members," right?</p> <p>2 A. Yes.</p> <p>3 Q. And you're suggesting there that</p> <p>4 Johnson & Johnson tell the National Toxicology</p> <p>5 Program that J&J's talc has no asbestos in it,</p> <p>6 right?</p> <p>7 A. Yeah, I'm just -- yes.</p> <p>8 Q. And the National Toxicology Program</p> <p>9 is part of, it's part of the United States</p> <p>10 Government agency, the Department of Health and</p> <p>11 Human Services, right?</p> <p>12 A. I accept that. I'm not sure.</p> <p>13 Q. Okay. You knew it was a part, a</p> <p>14 research part of the United States Government,</p> <p>15 correct?</p> <p>16 MS. BROWN: Foundation.</p> <p>17 A. I probably did at the time. I don't</p> <p>18 recall now.</p> <p>19 Q. All right. And so you're telling the</p> <p>20 people on this e-mail that Johnson & Johnson's talc</p> <p>21 is free from asbestos and that you've assembled the</p> <p>22 proof going back to the 1970s, right?</p> <p>23 A. I said that J&J developed proof that</p> <p>24 its talc was free from asbestos. And as part of</p> <p>25 work on the litigation and meeting with the</p>	<p style="text-align: right;">Page 339</p> <p>1 A. There was, I think Neal Matheson had</p> <p>2 a science background. I think Dr. -- well, Dr. Bob</p> <p>3 Armstrong, I think he did. William Powers. Clay</p> <p>4 Paterson is a lawyer, a regulatory lawyer working on</p> <p>5 this issue. Those are the ones I recognize and</p> <p>6 remember offhand.</p> <p>7 Q. All right. So you, John</p> <p>8 O'Shaughnessy, a lawyer, is telling scientists,</p> <p>9 including Matheson, Powers, Armstrong, of Johnson &</p> <p>10 Johnson, that Johnson & Johnson's talc was free of</p> <p>11 asbestos, right?</p> <p>12 A. I'm telling them that back in the</p> <p>13 '70s Johnson & Johnson, their company, which they</p> <p>14 know, developed proof that its talc was free from</p> <p>15 asbestos, and the message was that considered</p> <p>16 telling our story separately from the NTP and that I</p> <p>17 have assembled, through the litigation work, those</p> <p>18 documents, have them in one place; if they need</p> <p>19 them, they're available.</p> <p>20 Q. And that's what you told these</p> <p>21 scientists from Johnson & Johnson, correct?</p> <p>22 A. Scientists and the others on the</p> <p>23 call, too, which are the corporate communications</p> <p>24 people who we spoke about before. Lorena Telofski I</p> <p>25 know was at the company. She was a long time</p>

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<p style="text-align: right;">Page 340</p> <p>1 employee who worked, I think she worked in some kind 2 of support for the regulatory area, and there's 3 probably regulatory personnel on here who I'm not 4 recognizing. 5 Q. Was the letter from Mehaffy & Weber 6 from March of 1998 that informed you that Dr. Blount 7 had tested Johnson's Baby Powder and determined that 8 it contained asbestos part of the documents that you 9 assembled regarding Johnson's Baby Powder and 10 asbestos? 11 A. I am referencing documents that are 12 company documents here. That's what I was referring 13 to. 14 Q. Did you include the letter from 15 Mehaffy & Weber regarding Dr. Blount from March 16 of 1998 in the documents that you say you assembled 17 that show that Johnson's Baby Powder was free of 18 asbestos: Yes or no? 19 A. I have assembled those documents, 20 meaning they were collected for the litigation. I 21 don't think the company followed up on my 22 consideration because they made a joint presentation 23 with the other manufacturers. So I don't think 24 anything was ever provided. 25 Q. Move to strike the portion --</p>	<p style="text-align: right;">Page 342</p> <p>1 documents that you assembled that you're referring 2 to in your August of 2001 e-mail; true? 3 MS. BROWN: Objection; asked and 4 answered. 5 A. I didn't include anything because 6 nothing was sent. The documents I referred to, like 7 I said before, those documents from the company that 8 we collected as part of the litigation process. 9 Q. Okay. Let's just read the sentence. 10 A. Sure. 11 Q. The sentence you wrote says, "I have 12 assembled those documents and have them." 13 Is that what it states? 14 A. That's what it states, and I told you 15 -- 16 Q. Okay. Sir, is that what it states? 17 A. That's what it states. 18 Q. Okay. Was the letter from Mehaffy & 19 Weber from March of 1998 about Dr. Blount and her 20 testing of Johnson's Baby Powder and her 21 determination that it contained asbestos in those 22 documents that you assembled: Yes or no? 23 A. You're asking me then if that letter 24 was in company documents that were assembled for 25 collection for litigation. I don't know --</p>
<p style="text-align: right;">Page 341</p> <p>1 MS. BROWN: He's not finished. 2 A. Pursuant to my suggestion, I don't 3 think anything was provided. 4 Q. Move to strike -- move to strike the 5 portion that was not responsive. 6 Your e-mail says that you have 7 assembled the documents, right? 8 A. Yes. As I explained before, outside 9 lawyers had those documents assembled, which they do 10 for litigation, for discovery purposes, for our own 11 purposes in litigation, and that I had to make them 12 available to them if they want to follow-up on my 13 suggestion. 14 Q. Yes or no, Mr. O'Shaughnessy, did you 15 include the letter from Mehaffy & Weber from March 16 of 1998 about Dr. Blount in the documents that you 17 assembled: Yes or no? 18 MS. BROWN: Objection; asked and 19 answered. 20 A. There were no documents assembled and 21 sent to these people. The documents assembled were, 22 that I referred to were the company testing 23 documents. 24 Q. So you did not include the letter 25 from Mehaffy & Weber from March of 1998 in those</p>	<p style="text-align: right;">Page 343</p> <p>1 MS. BROWN: I -- 2 BY MR. BLOCK: 3 Q. Okay. The answer is -- 4 A. -- I didn't assemble anything. 5 Q. Move to strike everything after, "I 6 don't know," in the answer as not responsive. 7 Now, there are some communications 8 and PR people from Johnson & Johnson who you also 9 e-mailed on this e-mail of August 13 of 2001, 10 correct? 11 A. Yes. 12 Q. And who are those communications and 13 PR people that you told, on August 13, 2001, that 14 Johnson & Johnson's talc was free from asbestos? 15 A. I told them that J&J, back in the 16 '70s, developed proof that its talc was free from 17 asbestos. And Sarah Colamarino, I believe, was a 18 corporate communications person. 19 Q. Okay. And who was Owen Rankin? 20 A. I don't recall. 21 Q. Who is Fritz Grutzner? 22 A. I don't recall. 23 Q. How about Kathleen Dittman? 24 A. I don't recall. 25 Q. Michael Connors?</p>

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<p style="text-align: right;">Page 344</p> <p>1 A. I don't recall.</p> <p>2 Q. Elaine Knight?</p> <p>3 A. I don't recall. I may not have even</p> <p>4 known some of these people, but I don't recall them.</p> <p>5 Q. So tell me more about Sarah</p> <p>6 Colamarino. What do you remember about her? You</p> <p>7 said she was the head of PR for Johnson & Johnson at</p> <p>8 the time you e-mailed her?</p> <p>9 MS. BROWN: Objection; vague and</p> <p>10 compound.</p> <p>11 A. No, I said I think, I think she was a</p> <p>12 corporate communications person. She had a</p> <p>13 communications role. That's what I thought. That's</p> <p>14 what I recall.</p> <p>15 Q. All right. So your statement, as</p> <p>16 you've emphasized, says here that J&J, back in the</p> <p>17 '70s, developed proof that its talc was free from</p> <p>18 asbestos.</p> <p>19 Is that the words you used in your</p> <p>20 e-mail of August 13, 2001?</p> <p>21 A. It is.</p> <p>22 Q. Let's look at Exhibit 25 to your</p> <p>23 deposition. Back to the first binder, do you see</p> <p>24 Exhibit 25?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 346</p> <p>1 2001?</p> <p>2 A. Our lawyers conducted, you know, as</p> <p>3 part of the litigation, collection of documents.</p> <p>4 Any specific one, I don't know whether it was in</p> <p>5 there or not.</p> <p>6 Q. Do you ever recall seeing this</p> <p>7 document before dated July 29, 1971, which is</p> <p>8 Exhibit 25 to your deposition?</p> <p>9 A. No, I don't recall it.</p> <p>10 Q. Going back to the answer, the sworn</p> <p>11 Answers to Interrogatories that you approved in the</p> <p>12 Krushinski case. Answer 17 says, "Defendant's</p> <p>13 sources of talc were selected for their lack of</p> <p>14 contaminants and further, testing was performed over</p> <p>15 a significant number of years by outside</p> <p>16 laboratories which verified that defendant's talc</p> <p>17 sources did not contain asbestos or tremolite."</p> <p>18 That's what those sworn answers say</p> <p>19 that you approved, correct?</p> <p>20 A. Yes.</p> <p>21 MS. BROWN: Objection; asked and</p> <p>22 answered multiple times.</p> <p>23 BY MR. BLOCK:</p> <p>24 Q. Yet this document from July 29, 1971,</p> <p>25 which is Exhibit 25 to your deposition, says that</p>
<p style="text-align: right;">Page 345</p> <p>1 Q. And it's dated from the 1970s, right?</p> <p>2 A. 1971.</p> <p>3 Q. Okay. And subject is</p> <p>4 "Talc/Asbestos," right?</p> <p>5 A. Yes.</p> <p>6 Q. And it's to Mr. Foster. Do you know</p> <p>7 who that was?</p> <p>8 A. No, I don't recall.</p> <p>9 MS. BROWN: Object to this document</p> <p>10 as lacking foundation.</p> <p>11 BY MR. BLOCK:</p> <p>12 Q. It's from Mr. Nashed. Do you know</p> <p>13 who that was?</p> <p>14 A. No, these predate my employment with</p> <p>15 the company.</p> <p>16 Q. And this document from the 1970s</p> <p>17 starts out saying, "The talc used in Johnson's Baby</p> <p>18 Powder is obtained from a selected mine in Vermont</p> <p>19 where the ore consists mainly of platy talc with</p> <p>20 only trace amounts of fibrous minerals</p> <p>21 tremolite/actinolite."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And was this document from the 1970s</p> <p>25 one of the documents that you assembled and had in</p>	<p style="text-align: right;">Page 347</p> <p>1 Johnson's Baby Powder uses talc from a mine in</p> <p>2 Vermont which contains trace amounts of</p> <p>3 tremolite/actinolite, right?</p> <p>4 A. That's what it says. Your question</p> <p>5 is yet this contained. I'm not sure what kind of a</p> <p>6 connection you mean by yet.</p> <p>7 Q. This document that we're looking at</p> <p>8 says that Johnson's Baby Powder is obtained from a</p> <p>9 mine in Vermont that contained trace amounts of</p> <p>10 fibrous minerals tremolite/actinolite, right?</p> <p>11 A. That's what it says, yes.</p> <p>12 Q. This document from 1971 does not say</p> <p>13 that there's no tremolite in the Vermont mine used</p> <p>14 in Johnson's Baby Powder, does it?</p> <p>15 A. It says exactly what it says.</p> <p>16 Q. Okay. And are you aware that under</p> <p>17 Johnson & Johnson's own definition of asbestos at</p> <p>18 the time you worked for the company, fibrous</p> <p>19 tremolite is asbestos?</p> <p>20 MS. BROWN: I object; that misstates</p> <p>21 the document and the evidence and lacks foundation</p> <p>22 with this witness.</p> <p>23 A. You would have to ask the company</p> <p>24 scientist about what this means. I'm not the person</p> <p>25 to comment on that.</p>

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<p style="text-align: right;">Page 348</p> <p>1 Q. And when I --</p> <p>2 MS. BROWN: Can I please -- Jerry,</p> <p>3 Jerry, I know you're in a rush, I know you want to</p> <p>4 finish, but you are continuing to interrupt</p> <p>5 Mr. O'Shaughnessy. Please let him finish his</p> <p>6 answers.</p> <p>7 Mr. O'Shaughnessy, you can continue,</p> <p>8 please.</p> <p>9 A. I defer to the scientists on these</p> <p>10 type of issues, Mr. Block.</p> <p>11 Q. Right. You're not a scientist,</p> <p>12 right?</p> <p>13 A. I am not.</p> <p>14 Q. You're not qualified at all to say,</p> <p>15 as a scientific matter, whether there is asbestos in</p> <p>16 Johnson's Baby Powder, right?</p> <p>17 A. That's right.</p> <p>18 MS. BROWN: Objection.</p> <p>19 BY MR. BLOCK:</p> <p>20 Q. Yet that's exactly what you did</p> <p>21 August 13, 2001, is you made a scientific statement</p> <p>22 that J&J, back in the '70s, developed proof that its</p> <p>23 talc was free from asbestos. That's a scientific</p> <p>24 statement, isn't it, sir, a scientific statement by</p> <p>25 a lawyer?</p>	<p style="text-align: right;">Page 350</p> <p>1 Q. Sir, let's go to Exhibit 26 to your</p> <p>2 deposition.</p> <p>3 Now, again, your e-mail from</p> <p>4 August 13, 2001, refers to proof Johnson & Johnson</p> <p>5 developed back in the 1970s, right?</p> <p>6 A. That's correct.</p> <p>7 Q. All right. So looking at Exhibit 26,</p> <p>8 this is a document from the 1970s.</p> <p>9 Do you see on the cover page it's</p> <p>10 dated October 27, 1972?</p> <p>11 A. That's right.</p> <p>12 Q. Do you see that this document is from</p> <p>13 a laboratory called "McCrone"?</p> <p>14 A. Yes.</p> <p>15 Q. And do you see that the title of the</p> <p>16 document is "Examination of Johnson & Johnson's Baby</p> <p>17 Powder"?</p> <p>18 A. I do, yes.</p> <p>19 Q. And do you see that someone wrote on</p> <p>20 this report, "Do not use this report. Replaced by</p> <p>21 another version"?</p> <p>22 A. I see that, yeah.</p> <p>23 MS. BROWN: Objection; lacks</p> <p>24 foundation.</p> <p>25 BY MR. BLOCK:</p>
<p style="text-align: right;">Page 349</p> <p>1 MS. BROWN: Compound, argumentative,</p> <p>2 misstates the document.</p> <p>3 A. That's absolutely incorrect,</p> <p>4 Mr. Block. What I said here was Johnson & Johnson,</p> <p>5 back in the '70s, Johnson & Johnson, the people who</p> <p>6 work for the company, the scientists who work for</p> <p>7 the company, they developed proof that the talc was</p> <p>8 free from asbestos. Yes, that's what I said.</p> <p>9 Q. Who developed the proof, which</p> <p>10 scientist?</p> <p>11 A. All of the scientists at Johnson &</p> <p>12 Johnson.</p> <p>13 Q. Which ones? Name one.</p> <p>14 A. The researchers, anyone working on</p> <p>15 the product. I don't know all the --</p> <p>16 Q. Name one scientist at Johnson &</p> <p>17 Johnson that you say developed the proof that</p> <p>18 Johnson's Baby Powder was free from asbestos; name</p> <p>19 one.</p> <p>20 A. Back in the '70s, I don't recall. It</p> <p>21 would have been in the documents.</p> <p>22 Q. Can you name one, sir?</p> <p>23 MS. BROWN: He just answered that.</p> <p>24 Objection.</p> <p>25 A. No, not now I can't, no.</p>	<p style="text-align: right;">Page 351</p> <p>1 Q. And looking at the title, it says,</p> <p>2 "Examination of Johnson & Johnson's Baby Powder,"</p> <p>3 and there's a summary at the top, right?</p> <p>4 A. Yes.</p> <p>5 Q. And it says, "Two samples of Johnson</p> <p>6 & Johnson's Baby Powder, batch number 108T and 109T,</p> <p>7 which correspond to the samples examined by</p> <p>8 Professor Seymour Z. Lewin of New York University on</p> <p>9 behalf of FDA have been examined," and then it lists</p> <p>10 the methods.</p> <p>11 Do you see that there?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And it says it was examined to</p> <p>14 determine whether they contain any asbestiform</p> <p>15 minerals.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And it says that both samples</p> <p>19 contained an insignificant amount of tremolite.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And it says that the level -- it</p> <p>23 says, "A detailed examination," at the bottom,</p> <p>24 signed by Ian Stewart, "A detailed examination of</p> <p>25 two samples of Johnson & Johnson's Baby Powder shown</p>

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<p style="text-align: right;">Page 352</p> <p>1 this material to be substantially free of 2 asbestiform minerals. A few tremolite rods were 3 observed in both samples at a level less than 0.5 4 percent." 5 Do you see that? 6 A. I do. 7 Q. Okay. So the report does not say 8 there's no asbestiform minerals. It says that there 9 is tremolite at less than 0.5 percent, correct? 10 MS. BROWN: I object. That misstates 11 the document and it certainly lacks foundation with 12 this witness who has never seen this document 13 before. 14 A. You skipped when you described what 15 the document says. I don't dispute what the 16 document says, Mr. Block, but it's right there in 17 the conclusion. 18 Q. Okay. So your lawyer just testified 19 that this is the first time you've seen this 20 document. Did you hear what your lawyer said? 21 A. I did hear what she said. 22 Q. Okay. I want to hear your testimony, 23 sir. Have you ever seen this document before? 24 A. I don't recall. 25 Q. Was this one of the documents from</p>	<p style="text-align: right;">Page 354</p> <p>1 documents, but I don't recall the specifics of them. 2 Q. So we're looking at, we looked at 3 here McCrone testing of Johnson & Johnson's Baby 4 Powder, the product itself, right? 5 A. That's what it says, yes. 6 Q. Okay. Let's look at the next 7 exhibit, which is 26B. And this is another document 8 from the 1970s, right? April 24, 1974. 9 Do you see that? 10 A. That's right. That's correct. 11 Q. And just to be clear, in your e-mail, 12 August 13, 2001, when you referred to the documents, 13 where you said, "I have assembled," were you 14 referring to documents showing the testing of 15 Johnson's Baby Powder and the talc used in Johnson's 16 Baby Powder? 17 A. I was referring to all those 18 documents that were collected as part of the 19 litigation, including testing documents. 20 Q. All right. And Exhibit 26 that we 21 just looked at was a testing document for the 22 testing of Johnson's Baby Powder, right? 23 A. Yes, that's what it appears to be. 24 Q. And Exhibit 26B is another document 25 from McCrone and it refers to the testing of</p>
<p style="text-align: right;">Page 353</p> <p>1 the 1970s that you assembled that was the basis for 2 your statement that Johnson & Johnson's talc was 3 free from asbestos? 4 A. The documents referred to as 5 assembled were part of the, of all of the documents 6 from the company collected by our lawyers, so if 7 this was in our files I assume it was in there. I 8 did not physically assemble those documents. They 9 were assembled in the course of the litigation by 10 our outside counsel. 11 Q. So just to be clear -- well, sir, do 12 you recall ever seeing any document from the McCrone 13 laboratory that identified asbestiform minerals in 14 Johnson's Baby Powder before looking at this 15 document here today? 16 A. I recall seeing documents, testing 17 documents from McCrone. Specifics of those, I don't 18 recall. 19 Q. Before I showed this document here 20 today, do you recall seeing any McCrone reports 21 where any asbestiform minerals including tremolite 22 were identified in Johnson's Baby Powder? 23 A. I recall -- 24 MS. BROWN: Objection. 25 A. I recall seeing McCrone testing</p>	<p style="text-align: right;">Page 355</p> <p>1 Argonaut ore body. 2 Do you see that? 3 A. Yes. 4 Q. And do you know that Argonaut was a 5 talc ore that was used for certain years in 6 Johnson's Baby Powder? 7 MS. BROWN: Objection -- 8 A. I know that Argonaut was a mine, but 9 I'm not sure what it produced and how it was used. 10 Q. You know that Argonaut was one of the 11 Windsor Minerals mines in Vermont, correct? 12 A. I believe that's true, yes. 13 Q. Okay. And this summary says, "An 14 intensive examination has been made by X-ray 15 diffraction and electron microscopy of 38 core 16 samples taken from a new ore body which Windsor 17 Minerals, Inc. are contemplating exploiting." 18 Do you see that? 19 A. I do. 20 Q. And back in the '70s, Windsor 21 Minerals was part of Johnson & Johnson, right? 22 A. Yes, Windsor Minerals was a 23 subsidiary company. 24 Q. All right. And it says, "The 25 examination was undertaken to determine the</p>

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<p style="text-align: right;">Page 356</p> <p>1 mineralogical content of the core samples and, in 2 particular, whether or not there was any significant 3 content of asbestiform minerals in the ore body." 4 That's what it says, right? 5 A. That's what it says, yes. 6 Q. And it says, "For comparison, three 7 core samples from the current ore body were also 8 examined." Is that what it says? 9 A. Yes. 10 Q. And then it says, "The majority of 11 the samples showed no evidence of any asbestiform 12 minerals present, and of the 15 samples that did 13 show an asbestiform mineral, only one exceeded an 14 estimated level of approximately 0.0005 percent." 15 Is that what it says? 16 A. Yes. 17 Q. And toward the bottom it says, "It is 18 concluded that the ore body is of suitable quality 19 for the manufacture of high grade cosmetic and 20 toiletry products." 21 Is that what it says? 22 A. Yes. 23 Q. It also says, "As the feature of 24 particular interest was the asbestiform minerals 25 which might be present in the material, our</p>	<p style="text-align: right;">Page 358</p> <p>1 MS. BROWN: I object to this whole 2 line of questioning on foundation grounds. 3 BY MR. BLOCK: 4 Q. And then it says, "The level of 5 chrysotile observed in the two high samples is only 6 an order of magnitude above this and would 7 presumably be reduced considerably by your 8 beneficiation process." 9 Do you see that? 10 A. I do. 11 Q. And if we look at, there's a table 12 attached, and it says, "Table 2, electron 13 microscopic analyses of talc ore core samples." 14 Do you see that? 15 A. I do. 16 Q. And you see chrysotile here, there's 17 a column, right? 18 A. Yes. 19 Q. And you know chrysotile is asbestos, 20 right? 21 A. I hesitate to say. It's been such a 22 long time since I dealt with any of this. 23 Q. Okay. And I understand that. The 24 report that we looked at uses the words "chrysotile 25 asbestos," right?</p>
<p style="text-align: right;">Page 357</p> <p>1 attention was focused on these and thus, the 2 photographic documentation accompanying this report 3 consists almost exclusively of representation of 4 this small fibrous fraction." 5 Do you see that? 6 A. I do. Can you tell me what page 7 you're on, please? 8 Q. Sure. It is the page with the Bates 9 at the bottom 670. 10 A. Okay. Thank you. 11 Q. Then it says, "As will be seen from 12 Table 2, only two samples showed a level of asbestos 13 above 0.0005 percent, the actual figures being 0.007 14 percent and 0.001 percent, respectively, for 15 chrysotile asbestos, plus approximately 0.0001 16 percent of fibrous tremolite." 17 Do you see that? 18 A. I do. 19 Q. And it says, "Excluding these 20 samples, the remaining samples which showed 21 asbestiform fibers are exhibiting levels which are 22 no higher than has been seen in a raw composite used 23 to manufacture a finished product." 24 Is that what it says? 25 A. Yes.</p>	<p style="text-align: right;">Page 359</p> <p>1 A. I see the -- 2 MS. BROWN: Lacks foundation. 3 BY MR. BLOCK: 4 Q. Do you see on the screen "chrysotile 5 asbestos," sir? 6 A. I do. 7 Q. Okay. And then if you look at the 8 samples, the transmission electron microscopy 9 analysis, it lists the samples in the left column 10 and then you see "chrysotile" here? 11 A. I see the word "chrysotile," yes. 12 Q. All right. And you could see the 13 percentages of chrysotile are listed in the samples 14 in which chrysotile asbestos was detected, right? 15 A. I'm a little bit uncomfortable, 16 you're asking me to interpret this and I don't think 17 I can. I see where there are percentages and I see 18 where you're pointing out, but, you know, I, I feel 19 uncomfortable, I defer to the scientists to, you 20 know, testify about this. 21 Q. Okay. And was this document that we 22 just looked at, Exhibit 26B, from April of 1974, 23 this McCrone report that we're looking at where 24 chrysotile asbestos is reported, was this one of the 25 documents that you assembled in those documents that</p>

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<p style="text-align: right;">Page 360</p> <p>1 you said you had back in the e-mail that you wrote 2 on August 13, 2001? 3 A. I don't know if this document was in 4 the document collection that our attorneys had made 5 or not. It might have been. 6 Q. One thing you did not write, looking 7 back at Exhibit 37, one thing you did not write in 8 your e-mail on August 13, 2001, is that you defer to 9 the scientists, the scientists on the issue of 10 asbestos in Johnson's Baby Powder. That's not what 11 you wrote in your e-mail on October 13, 2001, right? 12 A. There's plenty of things I didn't 13 write in this e-mail. 14 Q. Right. 15 A. It's clear that I'm saying, though, 16 J&J developed proof, not John O'Shaughnessy 17 developed the proof, but Johnson & Johnson did. 18 Q. Today you're saying you defer to the 19 scientists, right? 20 A. I always do that. 21 Q. Back in August 13, 2001, you told the 22 scientists, including Mr. Matheson, Dr. Armstrong, 23 William Powers, "J&J developed proof that its talc 24 was free of asbestos," and you said that "I have 25 assembled those documents and have them."</p>	<p style="text-align: right;">Page 362</p> <p>1 and asked and answered. 2 BY MR. BLOCK: 3 Q. Name one, sir. 4 A. Like I said before, I don't know the 5 names offhand. There were scientists at Johnson & 6 Johnson in the '70s who did work on talc and that 7 information is in the document collection. 8 Q. You worked for Johnson & Johnson for 9 almost 31 years, right, sir? 10 A. I did, yes. 11 Q. You can't name a single scientist 12 that you claim developed proof that Johnson & 13 Johnson's talc was free from asbestos, correct? 14 MS. BROWN: I object; asked and 15 answered ten times. 16 A. I don't recall all the names and I 17 wasn't at the company back in the '70s. I can only 18 rely on what I was told by the company and what was 19 in their documents as part of my work on litigation. 20 That's what I was referring to. 21 Q. Mr. O'Shaughnessy, did you approve 22 public statements by Johnson & Johnson that went to 23 newspapers around the country that said that 24 Johnson's Baby Powder never contained asbestos? 25 A. I would have reviewed statements made</p>
<p style="text-align: right;">Page 361</p> <p>1 That's what you wrote in your e-mail 2 in August of 2001; true? 3 A. You asked me this question before and 4 I will answer it the same way. Yes, this is what I 5 wrote. Johnson & Johnson, meaning the Johnson & 6 Johnson company, all of its resources and scientists 7 back then developed that proof that as part of the 8 litigation process we had assembled documents and 9 had them in our attorneys' possession that we used 10 in litigation, but it had kind of -- J&J's a big 11 company, and even CPWW was a big company. There's a 12 lot of different departments. And when you get into 13 litigation, you collect documents from all these 14 departments and you kind of, you have a collection 15 of everything in one place. And that's what I was 16 referring to and offering it to them if they wanted 17 to follow-up on my suggestion. 18 Q. You said, in referring to Johnson & 19 Johnson, all of its resources and scientists, right? 20 A. Um-hum. 21 Q. Which scientists developed the proof 22 that Johnson's Baby Powder is free of asbestos? 23 Name one. 24 MS. BROWN: You already asked this 25 line of questioning. I object for the same reasons,</p>	<p style="text-align: right;">Page 363</p> <p>1 by the corporations since they would come up in 2 litigation. 3 Q. Let's go to Exhibit 35 to your 4 deposition. Do you see -- and we're in binder 2. 5 Do you see that Exhibit 35 to your 6 deposition is an e-mail from John McKeegan? 7 A. Yes. 8 Q. All right. And he, like you, worked 9 for Johnson & Johnson Corporate, correct? 10 A. Yeah, that's what the indication is. 11 Q. And his e-mail is dated June 4, 2000, 12 right? 13 A. That's right. 14 Q. And it's sent to some other people 15 from Johnson & Johnson Corporate, including Willard 16 Nielsen. Who is that? 17 A. The name is familiar. I don't know 18 his role. 19 Q. And Mr. -- 20 A. I was going to say I know I knew him, 21 but I don't remember. 22 Q. Was he a scientist, a communications 23 person, a PR person, an attorney or you don't know? 24 A. Not an attorney. I think he might 25 have been a corporate communications person.</p>

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<p style="text-align: right;">Page 364</p> <p>1 Q. Okay. And so Mr. McKeegan sends this 2 e-mail to three people from Johnson & Johnson or 3 four people from Johnson & Johnson Corporate; Mr. 4 Nielsen who you just described, Mr. Leebaw who is in 5 the area of public relations or communications, 6 right? 7 A. Yes. 8 Q. And two attorneys, you, John 9 O'Shaughnessy, and Clayton Paterson, right? 10 A. That's right. 11 Q. Did Clayton Paterson work for you or 12 were you parallel? 13 A. No, Clay Paterson was an attorney who 14 was a member of the Johnson & Johnson regulatory 15 group, the law department. So Clayton Paterson's 16 responsibilities, you know, I don't know them 17 exactly, but he would be involved in regulatory 18 issues and ancillary issues involving the company, 19 involving talc, he worked on talc. 20 Q. Clayton Paterson was not a -- hold on 21 a second. I just got feedback. Someone unmuted. 22 Let's just -- we're going to have to cure the 23 technical problem. Someone did something. 24 VIDEOGRAPHER: It looks like it might 25 be coming from the judge's microphone. Can't be</p>	<p style="text-align: right;">Page 366</p> <p>1 Is that what it says? 2 A. Yes. 3 Q. And if you look at the attached 4 article, and just to be clear, the e-mail refers to 5 the Associated Press version of the story from this 6 newspaper in Easton, Pennsylvania. And you 7 understand that the AP, the Associated Press, was a 8 major -- was and is a major news wire service? 9 A. Yeah, I recognize AP. 10 Q. Okay. And in this Associated Press 11 story from this paper in Easton, Pennsylvania, it 12 says -- that was sent to you, it says, "Johnson's 13 Baby Powder never contained asbestos," Johnson & 14 Johnson spokesman John McKeegan said." 15 Do you see that? 16 A. Yes. 17 Q. Does that refresh your memory that 18 John McKeegan was in the communications area at 19 Johnson & Johnson? 20 A. Yeah, that would make sense 'cause he 21 interfaces here with the media. 22 Q. All right. And what Mr. McKeegan 23 said on behalf of Johnson & Johnson in this news 24 article that was sent to you, it also states, 25 "Mr. McKeegan also states, 'Johnson's Baby Powder is</p>
<p style="text-align: right;">Page 365</p> <p>1 sure. 2 MR. BLOCK: All right. Let's see, I 3 think if it was just cured. 4 VIDEOGRAPHER: Okay. 5 MR. BLOCK: Okay. 6 BY MR. BLOCK: 7 Q. All right. Now, just to be clear, 8 Mr. Paterson was not a litigation attorney, correct? 9 A. That's right. 10 Q. Mr. Paterson of Johnson & Johnson was 11 an attorney, but he didn't litigate cases, right? 12 MS. BROWN: Asked and answered. 13 A. Yes, that's my understanding. 14 Q. All right. So looking at 15 Mr. McKeegan's e-mail of June 4, 2000, that was sent 16 to you, the subject is "Asbestos Stories," correct? 17 A. Right. 18 Q. And Mr. McKeegan writes, "We never 19 did receive a call back from the Seattle 20 Post-Intelligencer about asbestos and baby powder, 21 but we did receive a call from the Easton, 22 Pennsylvania Express-Times near the Crayola crayon 23 factory about the same subject. The Associated 24 Press version of their story which was sent -- which 25 went to newspapers around the country is attached."</p>	<p style="text-align: right;">Page 367</p> <p>1 mined at a talc mine in Vermont that we went through 2 very carefully before selecting,' McKeegan said." 3 You see that? 4 A. I do. 5 Q. And then Mr. McKeegan says, as a 6 spokesman for Johnson & Johnson, "The mine itself 7 goes through many tests to make sure that there are 8 no asbestos fibers or minerals that could become 9 asbestos fibers in the talc." 10 Do you see that? 11 A. I do. 12 Q. And so in this news article that was 13 sent to you by Mr. McKeegan in the year 2000, 14 Mr. McKeegan is telling the public that Johnson's 15 Baby Powder has never contained asbestos and that 16 the Vermont talc mine that Johnson & Johnson uses 17 has no asbestos in it, right? 18 A. Yeah, that's what it says here in the 19 quote. 20 Q. Okay. That's what Johnson & Johnson 21 was telling the public the entire time you worked 22 for the company, right? 23 MS. BROWN: Asked and answered many 24 times. 25 A. Yeah, Johnson & Johnson was telling</p>

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<p style="text-align: right;">Page 368</p> <p>1 the public in its statement that its product was 2 asbestos-free, yes. 3 Q. Okay. And Mr. McKeegan, on behalf of 4 Johnson & Johnson, could not have made those 5 statements to the public without your approval, 6 right, sir? 7 MS. BROWN: Objection. 8 A. No -- 9 MS. BROWN: Misstates the testimony. 10 BY MR. BLOCK: 11 Q. Why was Mr. McKeegan sending this 12 news article to you? 13 MS. BROWN: Foundation; speculation. 14 A. I'm the attorney who handles 15 litigation, so issues like this do come up in the 16 litigation, so he was keeping me informed. 17 Q. There is nothing about litigation in 18 this e-mail, right? 19 A. No, but it could be -- come up in 20 litigation. Just because the document doesn't 21 mention litigation doesn't mean that the lawyers 22 don't use it in the litigation, and I face it in a 23 lawsuit on behalf of Johnson & Johnson that I'm 24 defending. 25 Q. You certainly did not object to the</p>	<p style="text-align: right;">Page 370</p> <p>1 A. I don't recall. I do recognize the 2 name. But I don't recall. In fact, I think there 3 were a couple of people named Noble that I dealt 4 with at J&J. So I recognize the name, but I don't 5 know who it is. 6 Q. All right. Let's look at 7 Mr. McKeegan's e-mail of February 4, 2000, and the 8 subject is "HealthScout.com article." 9 Do you see that? 10 A. Yes, I do. 11 Q. And if we go to the Bates page ending 12 in 754, please. 13 A. Okay. 14 Q. In this news article that was sent to 15 you, it says, "John McKeegan, a spokesman for 16 Johnson & Johnson, which makes talc-containing 17 products, says the company is taking a very close 18 look at the study." 19 Do you see that? 20 A. Yes. 21 Q. And then it says, "All of Johnson & 22 Johnson's talc-containing products are free of 23 asbestos contaminants and use 'just the purest, 24 highest grade talc and fragrance,' McKeegan says." 25 Is that what this news article says</p>
<p style="text-align: right;">Page 369</p> <p>1 words that Mr. McKeegan used in telling the public 2 that Johnson's Baby Powder never contained asbestos, 3 right, sir? 4 MS. BROWN: Objection. 5 A. If you're asking me did I review what 6 he told them before, I -- no. John's 7 responsibility, I believe, just from my knowledge in 8 corporate communications, is they get media 9 inquiries and they respond to them. They don't come 10 to lawyers and say, well, I'm going to do this or 11 that. They might, but oftentimes they have prepared 12 statements that they work off of. 13 Q. Sir, Mr. McKeegan's, if we look at 14 Exhibit 35A, Mr. McKeegan would send his statements 15 and newspaper articles to a small group of people at 16 Johnson & Johnson and you were one of them, right? 17 A. Yes. 18 MS. BROWN: Objection; foundation. 19 BY MR. BLOCK: 20 Q. I mean, if you look at Exhibit 35A, 21 Mr. McKeegan is only sending this e-mail to two 22 people or three people from Johnson & Johnson 23 corporate; you, Jeffrey Leebaw in the public 24 relations area and a third person, Gary Noble. 25 Who's Gary Noble?</p>	<p style="text-align: right;">Page 371</p> <p>1 that Mr. McKeegan sent to you? 2 A. Yes. 3 Q. And so this statement by Mr. McKeegan 4 is that Johnson & Johnson's talc products are talc 5 and fragrance, right? 6 A. He said, and just the purest -- well, 7 you know, I don't know what he said, but this is a 8 quote by apparently a reporter, so I'm trying to 9 interpret it. "And use just the purest highest 10 grade talc and fragrance," yes, that's what it says. 11 Q. And they're quoting -- 12 A. Yeah. And the quote, you know, I'm 13 not trying to be picky, but, you know, the quote is 14 select. It's just part of the paragraph. So I 15 don't know all of what John said. I don't know if 16 the reporter got it right. But in essence, yes, J&J 17 is free from asbestos. So I think -- 18 Q. It's the same thing that the 19 Johnson's Baby Powder containers said for all the 20 years you worked at the company that the ingredients 21 were just talc and fragrance, right? 22 A. If that's what it said, that's what 23 the container said. I'm talking about what John 24 said. 25 Q. Okay, sir. I mean, at the time these</p>

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<p style="text-align: right;">Page 372</p> <p>1 news articles were being sent to you by Mr. McKeegan</p> <p>2 in the area of communications at Johnson & Johnson</p> <p>3 telling the public that Johnson's Baby Powder never</p> <p>4 contained asbestos, you actually knew that</p> <p>5 healthcare providers were cautioning against the use</p> <p>6 of talc products, correct?</p> <p>7 MS. BROWN: Objection; that misstates</p> <p>8 the document you're referring to.</p> <p>9 A. Well, I don't know what you're</p> <p>10 referring to, but it's juxtaposing two things, and I</p> <p>11 can't answer the question in that form.</p> <p>12 Q. Go to Exhibit 33 to your deposition.</p> <p>13 And this is back to binder 1.</p> <p>14 MS. BROWN: And, Jerry, when you</p> <p>15 finish this exhibit can we take a lunch break,</p> <p>16 please?</p> <p>17 MR. BLOCK: Yes.</p> <p>18 MS. BROWN: Thank you.</p> <p>19 A. I'm on 33. Is that the one I'm</p> <p>20 supposed to be looking at?</p> <p>21 Q. Yes. And do you see Exhibit 33 is an</p> <p>22 e-mail from Nancy Musco.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And that's the Nancy Musco</p>	<p style="text-align: right;">Page 374</p> <p>1 Q. All right. And it lists Nancy Musco</p> <p>2 as being with, she lists herself as "Nancy Musco,</p> <p>3 Product Safety."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Right? Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And the memo is to you,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. To you --</p> <p>12 A. And others.</p> <p>13 Q. It's to Mr. Paterson?</p> <p>14 A. Yeah.</p> <p>15 Q. It's to the J&J spokesperson John</p> <p>16 McKeegan and other people, right?</p> <p>17 A. That's right.</p> <p>18 Q. And it says, "A meeting was held on</p> <p>19 June 29, 1999, to review the history of talc and</p> <p>20 publicity circulated about talc and/or Johnson's</p> <p>21 Baby Powder."</p> <p>22 Is that what it says?</p> <p>23 A. Yes.</p> <p>24 Q. And in the memo it also says that</p> <p>25 "marketing informed us that the adult woman is the</p>
<p style="text-align: right;">Page 373</p> <p>1 that certified those Interrogatories in the</p> <p>2 Krushinski case as true, per your direction,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And Miss Musco sends this e-mail to</p> <p>6 you, John O'Shaughnessy, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And to John McKeegan, who made those</p> <p>9 statements to the public we just looked at, right?</p> <p>10 A. Right, right.</p> <p>11 Q. Okay. David Moret, do you know who</p> <p>12 that was?</p> <p>13 A. David, no.</p> <p>14 Q. All right. Also to Clayton Paterson,</p> <p>15 another attorney that you told us about, right?</p> <p>16 A. Right.</p> <p>17 Q. And there's another e-mail below</p> <p>18 where she says, Miss Musco, "Attached please find</p> <p>19 the minutes from the talc review held June 29,</p> <p>20 1999," right?</p> <p>21 A. Yes.</p> <p>22 Q. All right. And if we look at the</p> <p>23 minutes, it's on a letterhead for Johnson & Johnson</p> <p>24 Consumer Medical Affairs, right?</p> <p>25 A. It does, yes.</p>	<p style="text-align: right;">Page 375</p> <p>1 biggest user of talc products and that J&J is the</p> <p>2 largest manufacturer of talc products."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And having received this memo in</p> <p>6 1999, you knew this in 1999, right?</p> <p>7 A. I knew what was in the memo.</p> <p>8 Q. Okay. And then it says, "We</p> <p>9 discussed the impact of the issues on professional</p> <p>10 marketing."</p> <p>11 Is that what it says?</p> <p>12 A. Yes.</p> <p>13 Q. And then it says, "Healthcare</p> <p>14 providers caution against the use of talc products."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. You knew that in the 1990s, right?</p> <p>18 A. I mean, I knew, I knew, I knew what's</p> <p>19 in the statement here 'cause I had read it, and what</p> <p>20 I recall is that there was some inhalation issues</p> <p>21 and pediatricians were cautioning against, some</p> <p>22 pediatricians were cautioning against the use of</p> <p>23 talc products. That's my recollection.</p> <p>24 Q. And it says, at the bottom, that</p> <p>25 "Clayton Paterson and John O'Shaughnessy will</p>

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<p style="text-align: right;">Page 376</p> <p>1 discuss the meeting issues with R. Fine." 2 Is that what it says? 3 A. Yes. 4 Q. So it's saying attorney Clayton 5 Paterson and attorney John O'Shaughnessy will 6 discuss the meeting issues with Roger Fine, who was 7 then at what position at Johnson & Johnson? 8 A. I don't recall his position. It was 9 a legal position, though. What was the date of this 10 again? 11 Q. 1999. 12 A. I don't know if Roger was still the 13 head of litigation. He at one point became general 14 counsel, though. 15 Q. Okay. And Roger Fine, was he one of 16 your bosses at this time in 1999? 17 A. I don't know. I reported to the head 18 of litigation and I don't know if Roger was the head 19 of litigation at the time. 20 Q. And just to be clear, Roger Fine, who 21 it says you would discuss these meeting issues with, 22 was at one time general counsel at Johnson & 23 Johnson, which is the head lawyer for the entire 24 Johnson & Johnson, right? 25 A. Yes.</p>	<p style="text-align: right;">Page 378</p> <p>1 remember, and he is giving an answer that he doesn't 2 remember something and then counsel is continuing to 3 put documents in front of him to ask the very same 4 question time and time again, to go back to an 5 exhibit -- that Nancy Musco certification we must 6 have read five times yesterday and we've been back 7 to it three times today. 8 And so is he really just fishing for 9 these sound bites and it's becoming abusive to 10 Mr. O'Shaughnessy who is truthfully answering he 11 does not remember. He must have said ten times that 12 those documents were assembled by somebody else and 13 he doesn't remember what was in them, and then we go 14 page by page through a document he tells Mr. Block 15 time and time again he does not remember. 16 And so I know we are going to get a 17 request in a few hours for Mr. Block to continue 18 this into tomorrow, and I wanted to raise with your 19 Honor now that there is no reason that this 20 deposition cannot conclude today, and that I would 21 ask for some help from the court in getting us back 22 on track here and to have counsel stop plowing old 23 ground and truthfully harassing this retiree who is 24 doing his very best to answer these questions. 25 MR. BLOCK: Your Honor, I completely</p>
<p style="text-align: right;">Page 377</p> <p>1 Q. Okay. 2 MR. BLOCK: A lunch break was 3 requested and that's fine. 4 MS. BROWN: Okay. And before we do 5 that can we excuse the witness and can I raise 6 something with your Honor, please? 7 CONCIERGE: Okay. 8 VIDEOGRAPHER: Do you want to go off 9 the video record? 10 MS. BROWN: We can go off the video 11 and just remain on the stenographic, please. 12 VIDEOGRAPHER: Sure. Stand by. 13 Going off the record, 12:08 p m. 14 This is the end of Media Unit 2. 15 (Stenographic record.) 16 MS. BROWN: And, Jerry, can you just 17 stop sharing your screen so I can see everybody. 18 So, your Honor, I want to raise a 19 very increasing concern I have about the ability to 20 complete this deposition today based on the last 21 hour and 15 minute segment of questioning. 22 What I am, I'm afraid and 23 disappointed is going on here is that 24 Mr. O'Shaughnessy is doing his very best to give 25 truthful information about what he does or does not</p>	<p style="text-align: right;">Page 379</p> <p>1 disagree with Miss Brown's characterization of 2 things. We spent a lot of time this morning on J&J 3 making an objection to the use of a document that 4 they've had for three years in their database. 5 Then Mr. O'Shaughnessy, on a number 6 of occasions, was giving long answers that were 7 partially nonresponsive that forced me to re-ask 8 certain questions or ask them in different ways to 9 gain responsive answers, which I'm entitled to. 10 He's a lawyer, so he knows more than 11 anyone, he's a litigation lawyer, so he knows more 12 than anyone what a responsive answer is. I mean, we 13 all learn that in law school. 14 And, you know, he can say all he 15 wants that, you know, he didn't assemble the 16 documents, you know, he wrote in an e-mail when it 17 was fresh in his mind, "I assembled the documents," 18 so it's certainly fair examination to ask whether 19 some of these documents from the '70s were in the 20 documents he assembled. 21 I think this discussion is premature. 22 I think that if we don't have speaking objections, 23 if we don't have requests for sidebars challenging 24 documents that Johnson & Johnson has had for years 25 and have been produced for years and we're able just</p>

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<p style="text-align: right;">Page 380</p> <p>1 to get questioning in like we were, I think, over 2 the last hour or so, you know, let's see what 3 happens. 4 I think we're still in the same 5 position we were when we had our first meeting, 6 which is, you know, I said it could very well take 7 more than two days. Your Honor has told me you 8 would like to see it get done in two days. J&J has 9 said that there's no reason it should take more than 10 two days. I think we're still in that same 11 position, and I think that we should see where 12 things are this afternoon. 13 But, you know, if you time the 14 actual, my actual questions and Mr. O'Shaughnessy's 15 actual answers, and you remove Miss Brown speaking 16 during the testimony -- 17 MS. BROWN: There were -- 18 MR. BLOCK: -- and if you remove the 19 sidebars, I think we're probably somewhere around 20 four hours. So by the end of today we might only be 21 at seven hours, which is, you know, a one-day 22 deposition. 23 So again, I don't -- I think this is 24 premature. I think we should all take a breath and 25 have lunch, and I think we should come back, you</p>	<p style="text-align: right;">Page 382</p> <p>1 In my view, I have not seen anything 2 on either side to indicate that either side is 3 acting in other than complete good faith. I 4 respectfully don't agree that J&J is making speaking 5 objections. I don't agree that plaintiff is 6 harassing the witness. 7 My impression is that 8 Mr. O'Shaughnessy is acting in the utmost good 9 faith, not purposely or deliberately trying to avoid 10 counsel's questions. He's doing the best he can. I 11 don't get the impression that plaintiff is 12 intentionally trying to drag out the questioning to 13 go onto another day. 14 I agree with Mr. Block that at the 15 mid afternoon break we ought to talk about where we 16 are and hopefully we could wrap up today. In the 17 unfortunate event that we do have to go onto a third 18 day, it will not be open-ended. There will be a 19 finite limit on the time that I'm hopeful we could 20 wrap up today. 21 He's an exceedingly important witness 22 with a lot of documents and I just think Mr. Block 23 is doing a workmanlike job. Defense counsel is 24 doing her job to defend this deposition all within 25 the bounds of the rules and the professional</p>
<p style="text-align: right;">Page 381</p> <p>1 know, at, you know, maybe not take so long for 2 lunch, maybe come back at ten to 1 so we could, you 3 know, make headway. 4 And by the way, I'll just add that, 5 you know, I was respectful, you know, I'm being 6 accused of being abusive, which is not true, and I 7 don't know why Miss Brown is trying to make a record 8 that uses words like "abusive." 9 But I'll just remind Miss Brown and 10 your Honor that Mr. O'Shaughnessy wanted to get done 11 at 5 o'clock yesterday. You know, it's customary, 12 you know, to go longer, particularly when there's 13 been a lot of, you know, time spent on sidebars. I 14 had no problem with that. So, you know, all the 15 courtesies are being extended both ways here. 16 You know, I have issues with 17 Miss Brown's speaking objections. I didn't use the 18 word "abusive," I would not use the word "abusive." 19 SPECIAL MASTER: Let me give you my 20 impressions. And I apologize because I'm having 21 some issues with the video, but if the video was on 22 you would see that I have seen everything that went 23 on and have been paying close attention to 24 everything that's gone on since the first moment 25 this deposition started.</p>	<p style="text-align: right;">Page 383</p> <p>1 obligation. 2 So I think what we ought to do is at 3 the mid afternoon break, one should take a deep 4 breath, see where we are. Hopefully we can finish 5 today, that certainly would be our preference, but 6 we really won't know and Mr. Block will not be able 7 to tell us until he sees, I think, what happens for 8 the rest of the afternoon. 9 J&J, to give you some comfort, you 10 have probably seen my e-mail this morning where I 11 sent notice to the MDL plaintiffs that unlike this 12 deposition, I think it's fully expected that they 13 won't need a third day for Mr. O'Shaughnessy's 14 deposition. 15 Mr. Block is starting with a clean 16 slate, unlike the plaintiffs in the MDL which have 17 the benefit of this transcript and deposition. And 18 it may be that hopefully the MDL plaintiffs can 19 finish the deposition in one day rather than two, 20 but I would think it's completely out of the 21 question that it would be a third day contemplated 22 unless something totally and completely unexpected 23 happens. 24 And frankly, I would be surprised if 25 plaintiffs' counsel in the MDL disagree with me</p>

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<p style="text-align: right;">Page 384</p> <p>1 because Mr. Block has certainly covered a lot of 2 ground and the plaintiffs in the MDL have plain 3 notice of where Mr. O'Shaughnessy stands. 4 So I think we should respect 5 Mr. O'Shaughnessy. I think Mr. Block is acting 6 professionally and with courtesy as expected and we 7 should just continue. Let's take a lunch break. 8 MR. TISI: Your Honor. 9 SPECIAL MASTER: Hold on. At the mid 10 afternoon break we'll see where we are. I'm hopeful 11 that Mr. Block can get his notes and thoughts 12 together to focus on the crux of this and maybe 13 we'll get fortunate and finish up today. 14 MR. BLOCK: Your Honor, I'm sorry, I 15 know Mr. Tisi wants to speak. I just wanted to know 16 what time we're returning because I'm not going 17 to -- if there's going to be discussion about 18 scheduling for ovarian cancer, I'd just as soon go 19 eat. 20 SPECIAL MASTER: You tell me, 21 Mr. Block. 22 MR. BLOCK: Alli, what time do you 23 want to resume? 24 MS. BROWN: Let's do 12:50. We'll 25 try to keep on track.</p>	<p style="text-align: right;">Page 386</p> <p>1 Number two is this case, this 2 deposition was originally ordered by a judge in 3 Missouri and this was cross-noticed in the MDL, so 4 the rules that apply here, at least in part, has to 5 be taken into consideration to a State Court order 6 that this deposition proceed. 7 The third really important thing, and 8 I'll just kind of say this, is that we will endeavor 9 to complete this deposition within the time period 10 that we've talked about with Mr. Bernardo, with the 11 understanding that we may have to go over to a third 12 day. 13 We have no desire to plow all the 14 ground. We may have to, for context, refer to 15 exhibits. In fact, I'm quite sure, and I can give 16 you examples, that we will -- that there are 17 documents that Mr. Block used that refer to 18 asbestos, for example, but also refer to ovarian 19 cancer that were not discussed at all with the 20 witness. 21 So we may have to go back to some 22 documents that he discussed and said that, where we 23 say, for example, you discussed X with Mr. Block on 24 asbestos, but there's also some paragraphs that deal 25 with ovarian cancer.</p>
<p style="text-align: right;">Page 385</p> <p>1 MR. BLOCK: 12:50. 2 (Discussion held off the record.) 3 MR. TISI: Your Honor, we can 4 certainly deal with this afterwards. I know that 5 Miss O'Dell sent you an e-mail earlier today. And 6 I'm glad to see that Mr. Bernardo is actually on the 7 call 'cause we have had -- we have not had a meeting 8 with you about the ovarian cancer part of this, but 9 Mr. Bernardo and I have spent quite a bit of time 10 discussing this issue. 11 First of all, I mean, I'm just 12 getting notice, we are almost a day and a half into 13 the deposition of Mr. O'Shaughnessy and the word 14 "ovarian cancer" has not, I don't think the word 15 "ovarian cancer" has even come up in the entire 16 transcript. So that's an initial just observation 17 on my part. 18 But the agreement with Mr. Bernardo 19 in coordinating this was that we would use this 20 deposition, obviously, as a part of a good faith 21 effort to streamline our own examination in the 22 ovarian cancer cases, but it is very clear that we 23 are doing this without prejudice to our ability to 24 present this witness at the trial in an ovarian 25 cancer case, State and Federal. That's number one.</p>	<p style="text-align: right;">Page 387</p> <p>1 And we discussed this very issue with 2 Mr. Bernardo, I doubt Mr. Bernardo is going to 3 disagree with me, and we used this as an, almost as 4 a discovery deposition, we even tried to streamline 5 it. 6 I have no desire for the lawyers in 7 the MDL and the State Court ovarian cancer cases, 8 for example, to spend a lot of time on some of the 9 documents relating specifically to asbestos, but 10 it's important for us to be able to present our case 11 in the way in which we really want to be able to do 12 it for the benefit of the over 30,000 ovarian cancer 13 cases. 14 And to paraphrase a phrase that I've 15 used with Mr. Bernardo repeatedly is I never wanted 16 the meso individual cases that Mr. Block had to wag 17 the ovarian cancer dog involving 30,000 women. 18 Just one more observation there. I 19 would say that 50 percent of the documents that 20 Mr. Block used refer specifically to the Coker case. 21 Now, I'm not saying that the issues relating to the 22 Coker case do not also apply more generically, but 23 he is clearly focusing his examination on something 24 that will benefit meso cases that he has gotten, 25 that he's getting ready for his trial.</p>

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<p style="text-align: right;">Page 388</p> <p>1 I will tell you that our examination 2 for the ovarian cases would have a different, a 3 different focus, a different priority, and we should 4 be entitled to do that. So, you know, kind of 5 wrapping up, I know it's -- I've gone on, I didn't 6 expect to have to talk during this deposition at 7 all, so I apologize if I am not as concise as I 8 would otherwise like to be. 9 I would think, I just want to make 10 clear that we had set aside two days for this 11 deposition with a spillover for the third day. This 12 was a subject to, for a lot of discussion with 13 Mr. Bernardo that I do not think that he is going to 14 say that I said anything that is incorrect. 15 We never wanted to be in a position 16 where, because Mr. Block insisted on going first, 17 that we would be prejudiced. We were working things 18 out and being agreeable, but I don't feel like we 19 should be prejudiced by the fact that this has gone 20 on the way it has for the past two days. 21 Anyway, I apologize for being longer 22 than I thought, but it's very important that we put 23 this on the record. I am hoping that this is just 24 preemptive discussion, that we will not have to 25 really have a problem next week, but I thought it's</p>	<p style="text-align: right;">Page 390</p> <p>1 MR. TISI: Sure. 2 SPECIAL MASTER: Because if you know 3 you have at most two days, hopefully one day, to 4 depose O'Shaughnessy, you'll finish. 5 MR. TISI: I hear you. 6 SPECIAL MASTER: I want to be fair to 7 the witness and J&J as well. He's been here for two 8 days. I hope we don't go over to tomorrow, but I 9 wouldn't be shocked for a finite period of time. 10 You have seen his demeanor. You know 11 how he's going to respond. You know the flavor of 12 his questioning. That's of immense benefit to you 13 when you depose him, so -- 14 MR. TISI: I -- 15 SPECIAL MASTER: Let's wait to see 16 what happens. Why argue about something that may 17 not come up? I am completely confident that 18 everybody's acting in good faith. 19 MR. TISI: I agree. And I agree, 20 your Honor. I guess I was just taken back by the 21 suggestion that we complete in one day and I don't 22 think that -- 23 SPECIAL MASTER: I said hopefully, I 24 said hopefully one day. 25 MR. TISI: I --</p>
<p style="text-align: right;">Page 389</p> <p>1 important to at least raise the issue. 2 SPECIAL MASTER: Thank you, Mr. Tisi. 3 I thought it was also important that I put your team 4 on notice of what I believe is appropriate. I'm 5 sure you know that I not only have the benefit of 6 having dealt with these issues for 14 years on the 7 bench, but I was practicing for 26 years before I 8 went on the bench and I've been in your shoes 10,000 9 times, and I am of the firm belief that given the 10 background of the cases and the benefit that you 11 have because you sat in on this deposition that 12 absent unforeseen circumstances, there should be no 13 reason why you need a third day for O'Shaughnessy's 14 deposition. 15 I'm not saying, I'm not ruling that 16 it's totally foreclosed, I'm just giving you the 17 benefit of what I believe at the moment is 18 appropriate to put you on notice. I think it's fair 19 to assume, you know and I know that if I had the 20 black robe on and said you only have two days, under 21 no circumstances are you going longer than that, 22 you'd finish in two days. 23 MR. TISI: I hear you. 24 SPECIAL MASTER: I'm just giving you, 25 to be fair, I want to be fair to you.</p>	<p style="text-align: right;">Page 391</p> <p>1 SPECIAL MASTER: I live in the real 2 world, Mr. Tisi. I don't live in a fantasy world. 3 I hope you can finish in one day, but like I said, I 4 live in the real world. I think it's unlikely 5 but... 6 MR. TISI: May I ask a logistical 7 question, your Honor? You have a two-hour, I know 8 that, you know, apart from the sidebars and all that 9 stuff, but you have a two-hour commitment involving 10 the CLE. Is that something where you have to travel 11 back and forth to it and then it's really a three 12 hour break? 13 SPECIAL MASTER: No, no, no, I built 14 in the half hour on each side. 15 MR. TISI: Okay, okay. 16 SPECIAL MASTER: I have a one hour 17 CLE and I put a half hour on each side, so my two 18 hours should be fine. Why don't we start, if you 19 want, I'm perfectly agreeable if you want to start 20 at 8, 8:30, 9. 21 MR. TISI: Yeah, let's -- yeah, let 22 Mr. Bernardo and I talk about it. I know that, you 23 know, at least for my purposes, I'm on Mountain 24 Time, I'm more than happy to, you know, there will 25 be different questioners because it's a Missouri and</p>

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<p style="text-align: right;">Page 392</p> <p>1 a Federal case, so I'll have to coordinate with my 2 side on that, but I think starting earlier may make 3 some sense to make sure that we get, you know, the 4 one thing we have seen a pattern of what's happened 5 here, I don't know how much time we've actually 6 spent on the record getting questions and answers, 7 but if we start earlier then we can get what would 8 typically be if we were doing a regular deposition 9 without, you know, the issues that are raised in 10 this case, that we would be getting a lot more time 11 than we actually have gotten. 12 SPECIAL MASTER: Yes, we have to talk 13 and maybe we'll schedule another call because I am 14 still not certain if Special Master Norton is going 15 to participate in this deposition, and then we have 16 to talk about the logistics of how to coordinate his 17 rulings, efforts, with mine, so... 18 MR. TISI: Yes, I think that's 19 important. 20 SPECIAL MASTER: We'll have to deal 21 with that, and not to take up the people's time who 22 may want to take a bite before we reconvene, but 23 maybe by tomorrow we can caucus about the MDL 24 deposition. 25 MR. TISI: I agree, your Honor. And</p>	<p style="text-align: right;">Page 394</p> <p>1 AFTERNOON SESSION 2 VIDEOGRAPHER: Going back on the 3 record, 12:57 p.m. 4 This is the beginning of Media Unit 5 3. Okay. 6 BY MR. BLOCK: 7 Q. Mr. O'Shaughnessy, earlier we looked 8 at a statement or some statements to the public by 9 John McKeegan where he sent you an e-mail of news 10 articles where J&J told the public that Johnson's 11 Baby Powder never contained asbestos. 12 Do you remember that? 13 A. Yes, I recall. 14 Q. Okay. And isn't it true that at 15 times you edited statements about talc safety that 16 were intended for use with pediatricians? 17 A. I -- I -- yes, it's possible I edited 18 statements. I don't know who they would be used 19 for, I don't recollect. 20 Q. You did edit statements about talc 21 safety when you were at Johnson & Johnson, correct? 22 A. Yes, I may have. 23 Q. Let's go to the next exhibit that 24 we're going to look at, which is Exhibit 36. And 25 looking at Exhibit 36, I want to go to the page that</p>
<p style="text-align: right;">Page 393</p> <p>1 I apologize if I was more verbose than I would 2 typically be earlier. I didn't expect to have to 3 address this issue now, so I do apologize for that. 4 SPECIAL MASTER: You don't have to do 5 that Mr. Tisi. Everybody's acting in good faith. 6 There's a lot at stake, so let's just move on and 7 we'll see what happens this afternoon at the mid 8 afternoon break. Mr. Bernardo will talk about 9 whether we, hopefully not, but maybe go over for 10 today, but you already have my assurances it's not 11 going to be open-ended if we, unfortunately, have to 12 go over for today. 13 So we'll see you in a few minutes, 14 everybody. 15 (Luncheon recess: 12:32 p.m. to 16 12:57 p.m., Eastern Standard Time.) 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 395</p> <p>1 ends with 001 at the end. And it's an e-mail from 2 you dated -- yeah, it's the e-mail from you, it's an 3 e-mail chain. 4 A. I got it. 5 Q. Yes. And we're looking at the e-mail 6 from you from August 24, 2001, at 6:19 p.m. 7 A. Yes. 8 Q. All right. And you're sending this 9 e-mail to Jeffrey Leebaw, who we've discussed. 10 You're copying Nancy Musco. You're also sending 11 this to Lorena Telofski. 12 Do you know what her role was at 13 Johnson & Johnson? 14 A. Yeah, I know Lorena well. I don't 15 know her exact role. I think she was in regulatory, 16 but I know her well. 17 Q. All right. And John Crisan, 18 C-r-i-s-a-n, he's with Johnson & Johnson Corporate. 19 Do you know what he did? 20 A. John's an attorney. 21 Q. All right. And you attach to your 22 e-mail a file called "Powder Q-A Detailing." 23 A. Okay. 24 Q. You see that? 25 A. I do.</p>

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<p style="text-align: right;">Page 396</p> <p>1 Q. You see it listed there under your 2 name?</p> <p>3 A. Yes. Oh, I'm sorry, yeah.</p> <p>4 Q. Then if we just work our way up the 5 e-mail chain, by the way, the subject of the e-mail 6 is Johnson's Baby Powder and Prickly Heat Powder. 7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And if you could just make sure I 10 finish my question and I'll make sure that you get 11 to finish your answer. Okay?</p> <p>12 A. Sure.</p> <p>13 Q. So let's work our way up the e-mail 14 chain. So there's a response to your e-mail on 15 August 24, 2001, at 6:28 p.m., nine minutes later, 16 Mr. Leebaw responds -- actually he forwards the 17 e-mail to Marc Monseau for Johnson & Johnson 18 Corporate. And who is Mr. Monseau?</p> <p>19 A. I believe he was a corporate 20 communications person.</p> <p>21 Q. And Jeff Leebaw says to Mr. Monseau, 22 "Marc, This looks good to me. John's changes are on 23 the money. You might want to ask John McKeegan to 24 take a quick peak. He was very close to this issue. 25 Thanks. Jeff."</p>	<p style="text-align: right;">Page 398</p> <p>1 further, Mr. McKeegan responds to Mr. Monseau and 2 says, "Marc," and he says, "here are my thoughts, I 3 would take out the references to pharmaceutical 4 grade talc, the eating kind, since it isn't used in 5 our product. I agree with John's edits and I've 6 included some of my own." 7 Do you see that?</p> <p>8 A. Yeah, this is from John McKeegan, 9 right.</p> <p>10 Q. Right.</p> <p>11 A. Okay. Got it.</p> <p>12 Q. All right. So Mr. McKeegan says that 13 he made some edits, but that he also agrees with 14 your edits, right?</p> <p>15 A. Right.</p> <p>16 Q. All right. Then if we look at the 17 document that's attached, Johnson's Baby Powder and 18 Johnson's Baby Prickly Heat Powder, do you see it 19 says, "Safe and effective products for the 21st 20 Century," on the top?</p> <p>21 A. Yes.</p> <p>22 Q. And it says, "Affiliate Information 23 For Detailing at International Congress of 24 Pediatrics in Beijing, China, September 2001." 25 Do you see that?</p>
<p style="text-align: right;">Page 397</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So you sent an e-mail with an 4 attachment called "Powder Q-A Detailing," and then 5 your e-mail was forwarded by Mr. Leebaw, and 6 Mr. Leebaw comments that your changes are on the 7 money, right?</p> <p>8 A. Yes.</p> <p>9 Q. And then if we go to the next e-mail, 10 Mr. Monseau then forwards the e-mail to 11 Mr. McKeegan, August 27, 2001. 12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. And Mr. Monseau says to Mr. McKeegan, 15 "John, not sure what your schedule is like today, 16 but can you have a quick look at the attached 17 document that includes edits from John 18 O'Shaughnessy?" 19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. It says, "I have read through and 22 like Jeff, I agree with John's edits." 23 Do you see that?</p> <p>24 A. I do, yes.</p> <p>25 Q. And then if you follow the e-mail up</p>	<p style="text-align: right;">Page 399</p> <p>1 A. I do.</p> <p>2 Q. And did you know at this time in 2001 3 that that is a major conference for pediatricians 4 where pediatricians from all over the world attend?</p> <p>5 A. I don't know the nature of it. I'm 6 not familiar with it.</p> <p>7 Q. All right. Okay. And so if we look 8 at the document there's a question, "What is talc?" 9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And we could see that, like it says 12 in the e-mail, Mr. McKeegan, he said he deleted the 13 reference to pharmaceutical grade, and that's 14 reflected in the changes in the document, right, on 15 the right side?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. And the document says, the 18 edited document that you edited and Mr. McKeegan 19 edited has the statement, "Cosmetic grade talc is 20 free from impurities such as asbestos." 21 Is that what it says?</p> <p>22 A. Yes.</p> <p>23 Q. And this document that you edited and 24 Mr. McKeegan edited for this conference of 25 pediatricians says, "Confidential, for internal use,</p>

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<p style="text-align: right;">Page 400</p> <p>1 professional marketing training," correct?</p> <p>2 A. Where are you reading from? Yes, I</p> <p>3 see it.</p> <p>4 Q. And the statement, "Cosmetic grade</p> <p>5 talc is free from impurities such as asbestos," is a</p> <p>6 scientific statement, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And Mr. McKeegan was from the</p> <p>9 communications department from Johnson & Johnson,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. You were a lawyer for Johnson &</p> <p>13 Johnson, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Let's go to Exhibit 37A to your</p> <p>16 deposition. Exhibit 37A is a e-mail from Nancy</p> <p>17 Musco and it was sent to you, John O'Shaughnessy, an</p> <p>18 attorney; also to Clayton Paterson, an attorney;</p> <p>19 Mr. McKeegan from communications and a number of</p> <p>20 other people from the Johnson & Johnson companies,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And the subject of Miss Musco's</p> <p>24 e-mail is talc, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 402</p> <p>1 (Court Reporter clarification.)</p> <p>2 MS. BROWN: I objected on foundation</p> <p>3 grounds. Thank you.</p> <p>4 BY MR. BLOCK:</p> <p>5 Q. And, in fact, Mr. O'Shaughnessy, you</p> <p>6 were one of the key people at Johnson & Johnson that</p> <p>7 would review the papers that were submitted by the</p> <p>8 scientists that Johnson & Johnson paid to write</p> <p>9 papers to submit to the NTP, correct?</p> <p>10 MS. BROWN: Speculation.</p> <p>11 A. No, I wouldn't agree with that.</p> <p>12 Q. All right. Let's read this e-mail</p> <p>13 from Miss Musco from November 27, 2000.</p> <p>14 Do you see where it starts out, "Dear</p> <p>15 All"?</p> <p>16 A. Yes.</p> <p>17 Q. All right. And in this e-mail that</p> <p>18 was sent to you and others, Miss Musco writes, "Over</p> <p>19 the last few days we have received several papers to</p> <p>20 review for the upcoming NTP meeting."</p> <p>21 Is that what she said?</p> <p>22 A. Yes.</p> <p>23 Q. Then she writes, "As agreed, those</p> <p>24 papers received to date have been sent to key people</p> <p>25 for review of content accuracy and appropriateness</p>
<p style="text-align: right;">Page 401</p> <p>1 Q. Okay. And her e-mail refers to,</p> <p>2 attaches a document NTP meeting doc, and also she</p> <p>3 refers in the first sentence to NTP meeting.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. And she writes, "Dear All, Over the</p> <p>7 last few days we have received several papers to</p> <p>8 review for the upcoming NTP meeting."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And Johnson & Johnson retained</p> <p>12 certain scientists to write papers for, to submit to</p> <p>13 the NTP as part of the NTP's review of talc as a</p> <p>14 carcinogen, true?</p> <p>15 A. You're not referring to the document,</p> <p>16 you're asking me a question; right, Mr. Block?</p> <p>17 Q. I'm asking you as someone who was</p> <p>18 involved in the, in Johnson & Johnson's work</p> <p>19 relating to the NTP review of talc as a carcinogen,</p> <p>20 you know that Johnson & Johnson hired certain</p> <p>21 scientists to write papers to submit to the NTP,</p> <p>22 correct?</p> <p>23 A. I believe that's true 'cause my</p> <p>24 involvement with this was, yes, I was monitoring</p> <p>25 what was going on for the NTP meeting, yes.</p>	<p style="text-align: right;">Page 403</p> <p>1 of tone."</p> <p>2 Is that what it says?</p> <p>3 A. Yes.</p> <p>4 Q. And then it says, "Those key people</p> <p>5 will meet on Monday morning at 8 a.m. to discuss</p> <p>6 their opinions."</p> <p>7 Is that what it says?</p> <p>8 A. Yes.</p> <p>9 Q. And then Miss Musco writes,</p> <p>10 "Unfortunately, with the holiday weekend, John</p> <p>11 O'Shaughnessy, Clay Paterson and possibly John</p> <p>12 Hopkins will not have received their copies of the</p> <p>13 papers in time to have reviewed for the Monday AM</p> <p>14 meeting."</p> <p>15 Is that what it says?</p> <p>16 A. Yes, that's what it says.</p> <p>17 Q. So it says, the key people will be</p> <p>18 meeting on Monday morning, but that with the holiday</p> <p>19 weekend, John O'Shaughnessy, an attorney, Clay</p> <p>20 Paterson, an attorney, and possibly John Hopkins</p> <p>21 will not have received their copies in time to have</p> <p>22 reviewed the papers for the meeting, right?</p> <p>23 A. Right.</p> <p>24 Q. And then it says, "John, Clay" -- it</p> <p>25 says, "John, Clay and John H," so John H is John</p>

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<p style="text-align: right;">Page 404</p> <p>1 Hopkins, right?</p> <p>2 A. Yes. I assume, yes.</p> <p>3 Q. John, Clay is Clay Paterson, right?</p> <p>4 A. That's right.</p> <p>5 Q. And then the other John being</p> <p>6 referred to here is you, right?</p> <p>7 A. Yes.</p> <p>8 Q. So it says, "John, Clay and John H,</p> <p>9 Please address your comments and/or questions on</p> <p>10 these documents to Mike Chudkowski."</p> <p>11 Is that what it says?</p> <p>12 A. Yes.</p> <p>13 Q. So you, as a lawyer, were a part of</p> <p>14 reviewing papers from scientists that were being</p> <p>15 submitted to the NTP on behalf of Johnson & Johnson?</p> <p>16 MS. BROWN: I object; it misstates</p> <p>17 the testimony and the document.</p> <p>18 A. Yes, since this, again, the NTP issue</p> <p>19 was going to be an issue that would come up in</p> <p>20 litigation and it's responsive to litigation, I</p> <p>21 would be kept informed of what they were doing, what</p> <p>22 they planned to do and the papers that they used,</p> <p>23 and I would be given them to review, but the</p> <p>24 scientific papers, they would be reviewed by</p> <p>25 scientists.</p>	<p style="text-align: right;">Page 406</p> <p>1 legal perspective Clay Paterson, from a regulatory</p> <p>2 perspective Clay Paterson would be more involved in</p> <p>3 that kind of a document proceeding than me. But I'm</p> <p>4 certainly monitoring it and aware of what's going on</p> <p>5 for my purposes in litigation.</p> <p>6 Q. Let's go to Exhibit 39 to your</p> <p>7 deposition.</p> <p>8 Exhibit 39 to your deposition is an</p> <p>9 e-mail from Steven Mann dated March 29, 2002.</p> <p>10 Who is Steven Mann?</p> <p>11 A. I'm embarrassed to say, I knew</p> <p>12 Steven, I knew who he was, I just don't remember</p> <p>13 now, it's been so long.</p> <p>14 Q. And his e-mail says that Steven Mann</p> <p>15 was director of toxicology for Johnson & Johnson</p> <p>16 Consumer at this time in the early 2000s, right?</p> <p>17 A. Okay, I accept that.</p> <p>18 Q. Okay. And Steven Mann sends this</p> <p>19 e-mail to you, John O'Shaughnessy, and he writes,</p> <p>20 he's forwarding talc submission NTP?</p> <p>21 A. Yes.</p> <p>22 Q. See that's the subject?</p> <p>23 A. I do.</p> <p>24 Q. Okay. And you said that in terms of</p> <p>25 the submission to the NTP from Johnson & Johnson or</p>
<p style="text-align: right;">Page 405</p> <p>1 Q. Well, it says that you are going to</p> <p>2 receive these papers, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And it says you were going to</p> <p>5 be part of this meeting to talk about the papers</p> <p>6 after reviewing the papers, right?</p> <p>7 A. Well, apparently I was not going to</p> <p>8 be at the meeting, but was going to address my</p> <p>9 comments to Mike Chudkowski, who is a scientist.</p> <p>10 Q. And Nancy Musco was asking for your</p> <p>11 comments about scientific papers, right?</p> <p>12 MS. BROWN: That misstates the</p> <p>13 document; I object.</p> <p>14 A. No, not necessarily. She's asking</p> <p>15 for comments from the key people and she has given</p> <p>16 it to me if I saw something I wanted to comment</p> <p>17 about, I'm free to do that as a lawyer for the</p> <p>18 company. So, you know, there's no rule against me</p> <p>19 commenting. I'm not reviewing them for scientific</p> <p>20 accuracy.</p> <p>21 Q. Did you approve a written submission</p> <p>22 that J&J and the CTFA sent to the NTP that stated</p> <p>23 that cosmetic talc was free of asbestos?</p> <p>24 A. I would not have approval, but I</p> <p>25 certainly would have seen the document. From the</p>	<p style="text-align: right;">Page 407</p> <p>1 its trade association, from a legal perspective,</p> <p>2 that would be more in attorney Clayton Paterson's</p> <p>3 area.</p> <p>4 Is that what you said?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Yet Dr. Mann, Steven Mann, is</p> <p>7 only sending, is only including one attorney in this</p> <p>8 e-mail, right?</p> <p>9 A. Yeah, I mean, but that doesn't mean</p> <p>10 that Clay didn't receive it or have it.</p> <p>11 Q. The one --</p> <p>12 A. Yeah, I see my name on there and Clay</p> <p>13 Paterson's name is not.</p> <p>14 Q. Right. So Dr. Mann's e-mail says,</p> <p>15 "FYI, just the final documents that were submitted</p> <p>16 for your files. This was reviewed internally and</p> <p>17 OK'd several weeks back."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Okay. And the only attorney who</p> <p>21 Dr. Mann wrote that e-mail to from Johnson & Johnson</p> <p>22 is who?</p> <p>23 A. I'm the only attorney listed on the</p> <p>24 e-mail.</p> <p>25 Q. Okay. And if we look at the</p>

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<p style="text-align: right;">Page 408</p> <p>1 attachments in terms of the final documents that 2 were submitted to the NTP, do you see there's a 3 cover letter, and this is in the document Bates 4 labeled in the right corner 006. 5 A. As part of 39? 6 Q. Yes. It's part of Exhibit 39. It's 7 attached to Dr. Mann's e-mail. 8 A. Yes. 9 Q. Right. So, I mean, just to be clear, 10 Dr. Mann is sending around the final documents that 11 were submitted to the NTP and he attaches them, and 12 now I'm directing your attention to the cover letter 13 from March 18, 2002, and it's to Dr. Kenneth Olden 14 of the National Toxicology Program. 15 Do you see that? 16 A. Yes. 17 Q. All right. And in this attachment 18 that was sent to you, it says that Dr. Olden is 19 Director, National Toxicology Program and National 20 Institute of Environmental Health Sciences, U.S. 21 Department of Health and Human Services. 22 Do you see that? 23 A. I do. 24 Q. Okay. And so you would have known 25 then that the National Toxicology Program was part</p>	<p style="text-align: right;">Page 410</p> <p>1 sent to you, it says, "There's no asbestos in 2 cosmetic talc," right? 3 A. It's free of asbestos, yeah. 4 Q. Okay. And the submission also 5 acknowledges, the submission that was sent to the 6 NTP by the CTFA and J&J says, "Asbestos has long 7 been listed since the first ROC in 1980 as a known 8 human carcinogen, and has shown clearly carcinogenic 9 action in both humans and animals." 10 Do you see that? 11 A. I do. 12 Q. And you knew, when you were working 13 at J&J at this time in the 1990s and early 2000s, 14 that asbestos was a carcinogen; you knew that, 15 right? 16 A. Yes. 17 Q. And it says, "Asbestos is known to 18 induce pleural and respiratory system cancers." 19 Do you see that? 20 A. I do. 21 Q. And you knew that the entire time you 22 worked at J&J, right? 23 MS. BROWN: Objection; foundation. 24 A. You know, I think those are types of 25 lung cancer and that's, I would associate asbestos</p>
<p style="text-align: right;">Page 409</p> <p>1 of the United States Government, correct? 2 A. Yes. 3 Q. And if we go to what the submission 4 says that, that Johnson & Johnson and the CTFA sent 5 to the National Toxicology Program that was sent to 6 you in this e-mail, do you see the heading that 7 says, "Cosmetic talc versus asbestos"? 8 A. Yes. 9 Q. And here, the CTFA and J&J, in 2002, 10 tells the National Toxicology Program, "In 1976, 11 CTFA promulgated a specification for cosmetic talc 12 to ensure that it is free of asbestos." 13 Do you see that? 14 A. I do. 15 Q. And in terms of, and you understood 16 at this time that whether there was asbestos in talc 17 was a key issue in determining the cancer-causing 18 nature of talc? 19 MS. BROWN: I object; that lacks 20 foundation. 21 A. I -- if you're referring to what the 22 NTP was considering, I have to defer to the NTP. I 23 have to defer to the NTP in how they were regarding 24 it. 25 Q. Okay. So in this attachment that was</p>	<p style="text-align: right;">Page 411</p> <p>1 with lung cancer, mesothelioma, yes. 2 Q. And you knew that the entire time you 3 worked at J&J, right? 4 A. I was generally aware that asbestos 5 was associated as a carcinogen and with 6 mesothelioma. 7 Q. Now, we talked about Dr. Wehner 8 earlier. 9 Do you remember that? 10 A. I do. 11 Q. And you were aware that J&J sent 12 another article by Dr. Wehner to the NTP in 2002 13 during this time period, right? 14 A. I don't specifically recall what they 15 sent them, but I don't doubt that. 16 Q. Let's look at Exhibit 40 to your 17 deposition. Exhibit 40 is a memo from October 23rd, 18 2002, and the subject is "Talc Activities," and it 19 is to Lorena Telofski from Johnson & Johnson. 20 Do you see that? 21 A. I do, yes. 22 Q. And the writer of this memo is Bill 23 Ashton, William Ashton, who we have discussed 24 throughout your deposition. 25 Do you see that?</p>

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<p style="text-align: right;">Page 412</p> <p>1 A. I do.</p> <p>2 Q. And copied on this is Steven Mann,</p> <p>3 you're copied on this memo, right?</p> <p>4 A. Yes.</p> <p>5 Q. Dr. Hopkins is copied on this memo,</p> <p>6 right?</p> <p>7 A. He is, yes.</p> <p>8 Q. And Dr. Wehner himself is copied on</p> <p>9 this memo, right?</p> <p>10 A. Yes.</p> <p>11 Q. And Dr. Wehner would be copied on</p> <p>12 internal memos at Johnson & Johnson, right?</p> <p>13 MS. BROWN: Objection; lacks</p> <p>14 foundation.</p> <p>15 A. I don't know what he was copied on.</p> <p>16 He was certainly copied on this one.</p> <p>17 Q. Okay. And let's look at what Mr.</p> <p>18 Ashton says here, October 23rd, 2002. He says,</p> <p>19 "Attached is a copy of Dr. Wehner's article that was</p> <p>20 issued last week."</p> <p>21 Is that what it says?</p> <p>22 A. Yes.</p> <p>23 Q. And then it goes on to say, "It is a</p> <p>24 masterful piece of work in support of the safety of</p> <p>25 our type talc and is a major document that talc is</p>	<p style="text-align: right;">Page 414</p> <p>1 Is that what it says in this memo you</p> <p>2 were copied on?</p> <p>3 A. Yes.</p> <p>4 Q. All right. And then it attaches a</p> <p>5 copy of Dr. Wehner's article, and so I'd like to</p> <p>6 look at that article and if we look at the cover</p> <p>7 page, Dr. Wehner's article is entitled: "Cosmetic</p> <p>8 Talc Should Not Be Listed As a Carcinogen: Comments</p> <p>9 on NTP's Deliberations to List Talc As a</p> <p>10 Carcinogen."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. And Dr. Wehner is identified</p> <p>14 as being from Biomedical and Environmental</p> <p>15 Consultants, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And there's two footnotes by his</p> <p>18 name, and let's see what those footnotes say. One,</p> <p>19 Dr. Wehner gives his fax number and e-mail, right?</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And the other footnote by his name</p> <p>23 says, "This review was conducted independently and</p> <p>24 the opinions expressed in it are solely those of the</p> <p>25 author."</p>
<p style="text-align: right;">Page 413</p> <p>1 not a carcinogen."</p> <p>2 Is that what it says?</p> <p>3 A. Yes.</p> <p>4 Q. All right. And then Mr. Ashton says,</p> <p>5 "We have made arrangements to have a reprint of</p> <p>6 Wehner's article sent to each member of the NTP</p> <p>7 review panel in the next week or so."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And it says that, Mr. Ashton says</p> <p>11 also, "We also will have the work come to the</p> <p>12 attention of some of our Federal agencies such as</p> <p>13 OSHA, U.S.G.S. and others here in the United</p> <p>14 States."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And then it also says, Mr. Ashton</p> <p>18 says, "We have arranged that Dr. Wehner's article</p> <p>19 will be sent to the officials of IARC by the parent</p> <p>20 company of our U.S. talc producer, Luzenac France."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And then Mr. Ashton says, "This</p> <p>24 should have a sobering effect on the IARC group</p> <p>25 regarding any adverse decisions on talc."</p>	<p style="text-align: right;">Page 415</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And let's look at the</p> <p>4 acknowledgment that Dr. Wehner had in this article.</p> <p>5 If you go to the page ending in 803.</p> <p>6 A. Yes.</p> <p>7 Q. It says, "Acknowledgment."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And Dr. Wehner says, "I am indebted</p> <p>11 to Dr. John Hopkins, Innovant Research, United</p> <p>12 Kingdom, for his review of this manuscript and his</p> <p>13 constructive comments."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. And it doesn't list Johnson & Johnson</p> <p>17 in the acknowledgment, does it?</p> <p>18 A. It's not in there, no.</p> <p>19 Q. It lists Dr. John Hopkins, who was</p> <p>20 employed by Johnson & Johnson companies for many</p> <p>21 years prior to the date of this publication,</p> <p>22 correct?</p> <p>23 A. I guess. I don't know the dates, but</p> <p>24 I am thinking John Hopkins was now not an employee</p> <p>25 of the company. He was, of course, as you said, but</p>

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<p style="text-align: right;">Page 416</p> <p>1 now was under a company called, you know, "Innovant 2 Research." 3 Q. Right. So the acknowledgment doesn't 4 say I am indebted to Dr. John Hopkins, long time 5 employee of Johnson & Johnson, does it? 6 A. No, it doesn't say that. 7 Q. And it doesn't say the name "Johnson 8 & Johnson" at all, does it? 9 A. No. 10 Q. And in the meantime, Johnson & 11 Johnson is e-mailing -- strike that. 12 In the meantime, Johnson & Johnson is 13 writing a memo about this article copying Dr. Wehner 14 on the memo and copying Dr. Hopkins on the memo, 15 right? 16 A. Yes. 17 Q. And the article that Dr. Wehner wrote 18 that said that cosmetic talc should not be listed as 19 a carcinogen, let's look at this paragraph on the 20 first page of the article that starts with, "The 21 important point to remember." And I put it on the 22 screen, second column, first page of the article. 23 A. I got it. 24 Q. And Dr. Wehner says in this article, 25 "The important point to remember in the context of</p>	<p style="text-align: right;">Page 418</p> <p>1 Q. And Exhibit 40B is a letter from 2 Dr. Wehner to Dr. Steven Mann from Johnson & Johnson 3 Consumer during that same time period, September of 4 2002, right? 5 A. A few weeks later. 6 MS. BROWN: Foundation. 7 BY MR. BLOCK: 8 Q. And do you see that Dr. Wehner, it's 9 on his letterhead, right? 10 A. Yes. 11 Q. All right. And let's see what 12 Dr. Wehner says to Dr. Mann in September of 2002. 13 It says, "Dear Steve, I am enclosing BEC's invoice 14 for professional services." 15 Do you see that? 16 A. I do. 17 Q. And BEC stands for Biomedical and 18 Environmental Consultants, BEC, right? 19 A. I'd assume so. 20 Q. Okay. Well, Dr. Wehner's writing 21 Johnson & Johnson and enclosing an invoice for his 22 professional services in September of 2002, right? 23 A. I assume that's what this is. 24 Q. And Dr. Wehner wants to know about 25 the status of the Krushinski litigation, right?</p>
<p style="text-align: right;">Page 417</p> <p>1 this review is that non-fibrous, or pure, talc as 2 used by consumers in cosmetics or pharmaceuticals 3 undergoes strict quality control measures and does 4 not contain asbestos fibers." 5 Is that what it says? 6 A. That's right. 7 Q. And at this very time that Dr. Wehner 8 made this statement in this article and did not 9 acknowledge Johnson & Johnson in the article, 10 Dr. Wehner was someone who was, in fact, being paid 11 as a consultant by Johnson & Johnson, right? 12 MS. BROWN: I object; it misstates 13 the evidence and the facts. 14 A. I don't -- he certainly was a 15 consultant but at what times, I don't know. 16 Q. Okay. So this publication was in 17 2002, right? 18 A. Yes. 19 Q. And there's this memo from October of 20 2002 attaching a publication and Dr. Wehner is on 21 the memo, right, copied on the memo? 22 A. Yes. 23 Q. Let's look at Exhibit 40B. Do you 24 see Exhibit 40B? 25 A. I do.</p>	<p style="text-align: right;">Page 419</p> <p>1 A. He asked about that, yeah. 2 Q. And Dr. Wehner says that, "I will let 3 you know when it is published and I'll send 50 4 reprints to Bill Ashton," right? 5 A. Yes. 6 Q. Okay. So Bill Ashton, who wrote the 7 memo about this publication of Dr. Wehner in 2002, 8 we see that Dr. Wehner is promising to send 50 9 reprints of the publication to Bill Ashton, right? 10 A. Yes. 11 MS. BROWN: Lacks foundation. 12 BY MR. BLOCK: 13 Q. Dr. Wehner, sir, was not an 14 independent scientist in relation to Johnson & 15 Johnson, was he? 16 MS. BROWN: Objection; vague; lacks 17 foundation. 18 A. I -- I'm not able to comment on 19 whether he was independent or not vis-a-vis Johnson 20 & Johnson. He was a consultant to the company. I 21 knew that. That's about all I can say. 22 Q. Do you remember Dr. Wehner sending 23 you an article about asbestos phobia? 24 A. No. 25 Q. Do you remember Dr. Wehner sending</p>

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<p style="text-align: right;">Page 420</p> <p>1 you a note referring to nuts that are obsessed with 2 cosmetic talc? 3 A. I don't. 4 Q. Let's look at Exhibit 40A. Exhibit 5 40A, you can see, is a fax from Dr. Wehner dated 6 October 1st, 2002? 7 A. Yes. 8 Q. So this is the same month and same 9 year as the memo we were looking at where Mr. Ashton 10 attached Dr. Wehner's article and copied you, right? 11 A. Yes. 12 Q. All right. And Dr. Wehner sends this 13 fax to William Ashton, John O'Shaughnessy, and Rich 14 Zazenski, right? 15 A. Yes. 16 Q. And the title of this article that 17 Dr. Wehner sends to you is: "Asbestos Phobia to Eat 18 At Economy." 19 Is that what it says? 20 A. Yes. 21 Q. And it starts out with a statement: 22 "Asbestos phobia, as those unfortunate enough to be 23 school board members decades ago know, was the most 24 scientifically irrational, hysterically hyped and 25 immensely profitable environmental scare of the late</p>	<p style="text-align: right;">Page 422</p> <p>1 Mr. Zazenski on opposing the NTP listing talc as a 2 carcinogen? 3 A. No, I worked with the company on any 4 position with respect to regulatory agencies. I 5 don't work with people outside the company. 6 Q. You certainly would give 7 phone -- strike that. 8 You certainly would make phone calls 9 to Mr. Zazenski and talk about the NTP review about 10 talc, correct? 11 A. I don't know if I would make them or 12 receive them, but I wouldn't, I wouldn't doubt that 13 it would come up if I was talking to him at the time 14 the events occurred. 15 Q. Did Mr. Zazenski ever tell you that 16 J&J would owe him a bounty if talc was not listed as 17 a carcinogen by the NTP? 18 MS. BROWN: Objection; foundation. 19 A. I don't -- 20 Q. Let's go to Exhibit 41A. 21 MS. BROWN: I object on foundation to 22 this Imerys document. 23 BY MR. BLOCK: 24 Q. Sir, are you familiar with Steve 25 Mauney from Luzenac?</p>
<p style="text-align: right;">Page 421</p> <p>1 20th Century." 2 Is that what it says in the article 3 he sent you? 4 A. Yes. 5 Q. And at the bottom there's a note from 6 Dr. Wehner, "For your information, similar to some 7 nuts who are obsessed with cosmetic talc!" 8 Do you see that? 9 A. I do. 10 Q. And he signs Al, right? 11 A. Yes. 12 Q. That was the scientist that Johnson & 13 Johnson was paying as a consultant while you worked 14 for the company, correct? 15 MS. BROWN: Objection; foundation. 16 A. He was a paid consultant for the 17 company, yeah. 18 Q. Now, this Mr. Zazenski that we've 19 talked about, this Mr. Zazenski that's included on 20 the fax from Dr. Wehner, you said he's someone you 21 worked with in what capacity? 22 A. He was at Luzenac and he was kind of 23 the person I would go to with respect to information 24 concerning litigation. 25 Q. Isn't it true that you worked with</p>	<p style="text-align: right;">Page 423</p> <p>1 A. I am not. 2 Q. How about Jack Buettner? 3 A. No. 4 Q. Robert Bernstein? 5 A. No, I don't recall them. 6 Q. But you do know Rich Zazenski from 7 Luzenac, right? 8 A. I do, yes. 9 Q. And let's look at his e-mail from 10 May 17, 2001, and the subject is "J&J." 11 Do you see that? 12 A. Yes. 13 Q. All right. And the e-mail states, 14 "Just so you know, I received a call from Bill 15 Ashton yesterday." 16 Do you see that? 17 A. Yes. 18 Q. All right. And then the second 19 sentence Mr. Zazenski says, "We then turned to the 20 NTP review. I informed Bill that the issue will be 21 decided in mid-June." 22 Do you see that? 23 A. Yes. 24 Q. And then Mr. Zazenski says, with 25 regard to Mr. Ashton, "He was grateful for the</p>

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<p style="text-align: right;">Page 424</p> <p>1 inside information."</p> <p>2 Is that what it says?</p> <p>3 A. Yes.</p> <p>4 Q. And then Mr. Zazenski says, "As I</p> <p>5 also told Bill that I was quite disappointed in both</p> <p>6 CTFA and J&J with regard to their efforts to fight</p> <p>7 this review. Bill was in full agreement and said he</p> <p>8 would try to get their main attorney, John</p> <p>9 O'Shaughnessy, to call me."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. "And that I should tell him what I</p> <p>13 just told Bill."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. And then Mr. Zazenski says, "Sure</p> <p>17 enough, O'Shaughnessy called and I repeated what I</p> <p>18 told Bill, described Luzenac's aggressiveness and</p> <p>19 involvement, as well as our disappointment by the</p> <p>20 lack of activity of others."</p> <p>21 Is that what Mr. Zazenski says here?</p> <p>22 A. Yes.</p> <p>23 Q. And then Mr. Zazenski writes, "Since</p> <p>24 I worked with O'Shaughnessy before, I told him</p> <p>25 flatly that if talc doesn't get listed, J&J and</p>	<p style="text-align: right;">Page 426</p> <p>1 right?</p> <p>2 MS. BROWN: Objection; foundation.</p> <p>3 A. No, not at all.</p> <p>4 I'm sorry. No, not at all.</p> <p>5 Q. Mr. Zazenski would send you his</p> <p>6 correspondence that he sent to the NTP so you would</p> <p>7 know what Mr. Zazenski was saying to the NTP, right?</p> <p>8 MS. BROWN: Lacks foundation.</p> <p>9 A. I don't recall what he sent me or</p> <p>10 didn't send me, but I didn't work alongside</p> <p>11 Mr. Zazenski in doing anything other than on the</p> <p>12 litigation.</p> <p>13 Q. Let's go to Exhibit 41 to your</p> <p>14 deposition.</p> <p>15 A. 41?</p> <p>16 Q. Yep. Exhibit 41. And the e-mail we</p> <p>17 were just looking at was from May of 2001, and now</p> <p>18 we're in August 19th, 2003.</p> <p>19 Do you see that, the date of</p> <p>20 Mr. Zazenski's fax?</p> <p>21 A. Yes.</p> <p>22 Q. All right. And that fax is Exhibit</p> <p>23 41, and it is to Bill Ashton at J&J, right?</p> <p>24 A. Yes.</p> <p>25 Q. And that's the same Bill Ashton that</p>
<p style="text-align: right;">Page 425</p> <p>1 every other talc supplier/customer should pay us a</p> <p>2 bounty for leading the fight."</p> <p>3 Do you see that?</p> <p>4 A. I said it in a nice tone, he claims,</p> <p>5 yes.</p> <p>6 Q. Right. And then he said I said it in</p> <p>7 a nice tone, right?</p> <p>8 A. Yep.</p> <p>9 Q. And then Mr. Zazenski writes, "John</p> <p>10 understood the message."</p> <p>11 See that?</p> <p>12 A. Yes.</p> <p>13 Q. You did speak to Mr. Zazenski at</p> <p>14 Luzenac about the NTP's review of talc as a</p> <p>15 carcinogen, right?</p> <p>16 A. Yeah, I don't recall the call, but if</p> <p>17 he said so, I am assuming I called him back. It</p> <p>18 sounds like he was complaining to Mr. Ashton,</p> <p>19 Mr. Ashton threw him over to me since he knew me,</p> <p>20 and he vented to me and that was that.</p> <p>21 Q. He said Mr. Ashton agreed with him?</p> <p>22 A. That's what he said.</p> <p>23 Q. Okay. And, I mean, the fact is, is</p> <p>24 that you did work alongside Mr. Zazenski of Luzenac</p> <p>25 in opposing the NTP listing talc as a carcinogen,</p>	<p style="text-align: right;">Page 427</p> <p>1 was referred to in the e-mail we just looked at,</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. And you're copied?</p> <p>5 A. I am.</p> <p>6 Q. On the document as well, right?</p> <p>7 A. I am.</p> <p>8 Q. And Mr. Zazenski is keeping Johnson &</p> <p>9 Johnson informed by writing, "Here was my letter to</p> <p>10 Olden earlier this year."</p> <p>11 Do you see that?</p> <p>12 A. He's sending it to Mr. Ashton, yes.</p> <p>13 Q. But he's copying only two other</p> <p>14 people at the entire Johnson & Johnson company, John</p> <p>15 O'Shaughnessy and Lorena Telofski, right?</p> <p>16 A. Yes.</p> <p>17 Q. And the letter that he sent to you is</p> <p>18 to Mr. Olden at the NTP, part of the United States</p> <p>19 Government, right?</p> <p>20 A. Yes.</p> <p>21 Q. And that letter is dated February 7,</p> <p>22 2003, right?</p> <p>23 A. Yes.</p> <p>24 Q. And the letter says, "It is clear to</p> <p>25 Luzenac scientists that cosmetic talc exposures</p>

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<p style="text-align: right;">Page 428</p> <p>1 prior to 1976 cannot be characterized with any 2 degree of certainty as to mineral composition and 3 the absence of asbestos." 4 Is that what it says? 5 A. That's what it says. 6 Q. And then it says, "In fact, a 7 thorough review of the scientific literature 8 published worldwide during the 1940s, 1950s, 1960s, 9 and 1970s strongly suggests that many commercial 10 talc products did indeed contain some quantities of 11 asbestos." 12 Do you see that? 13 A. I do. 14 Q. And then Mr. Zazenski, he's the one 15 who wrote this letter to the NTP, right? 16 A. Yes. 17 Q. Then he adds, and then he refers to 18 "present day talc as asbestos-free." 19 Do you see that? 20 A. Yes. 21 Q. Okay. So Luzenac, Mr. Zazenski, sent 22 a letter to NTP and then faxed it to Bill Ashton at 23 Johnson & Johnson and copied you where Luzenac told 24 the NTP that some talc products prior to 1976 did 25 contain asbestos, but that present day talc as of</p>	<p style="text-align: right;">Page 430</p> <p>1 Q. Let's look at Exhibit 48 to your 2 deposition. We're skipping to Exhibit 48 for now. 3 A. I have it. 4 Q. Okay. And Exhibit 48 is an e-mail 5 chain and the top date on the top document is an 6 e-mail from you August 8, 2004? 7 A. Yes. 8 Q. And the subject is regarding talc 9 NTP. 10 You see that? 11 A. Yes. 12 Q. And just to gain some context, let's 13 look at lower down in the e-mail chain, and there's 14 an e-mail from Dr. Steven Mann from a day earlier, 15 October 7, 2004. 16 Do you see that? 17 A. I do. 18 Q. And Dr. Mann sends an e-mail, talc 19 NTP, and he sends it to Sarah Colamarino. She was 20 in public relations, right? 21 A. Yes. 22 Q. Marc Monseau, he was in 23 communications, right? 24 A. Right. 25 Q. To you, John O'Shaughnessy, right?</p>
<p style="text-align: right;">Page 429</p> <p>1 2002 were asbestos-free, right? 2 MS. BROWN: Foundation. 3 A. That's what he said was Luzenac's 4 position. 5 Q. So not only did Mr. Zazenski share 6 letters like this that were written to the NTP with 7 Johnson & Johnson, but you would also have to admit 8 that Mr. Zazenski shared intelligence with Johnson & 9 Johnson about the NTP's talc review process? 10 A. Whatever he shared with Johnson & 11 Johnson would be evidenced in the documents, I 12 guess. I don't -- I don't -- I don't know. There 13 was a business relationship, of course, between 14 Johnson & Johnson Consumer and Luzenac that was the 15 supplier, so, you know, there was a lot of contact 16 between those two companies. There had to be. They 17 were in a business relationship together. 18 And apparently Zazenski was, you 19 know, part of that process. He knew I was handling 20 litigation, so he would -- he knew I was an attorney 21 for J&J, so apparently he would send me things. 22 Q. To your knowledge, did Mr. Zazenski 23 from Luzenac have inside information, also known as 24 intelligence, about the NTP's talc review process? 25 A. I have no idea what he had.</p>	<p style="text-align: right;">Page 431</p> <p>1 A. Yes. 2 Q. And Dr. Mann says in his e-mail to 3 all of you, "I'd like to get everyone on a 4 conference call, specifically to hear what Rich 5 Zazenski, Luzenac, has to say about some 6 intelligence he has been hearing about the NTP 7 process on talc." 8 Do you see that? 9 A. Yes. 10 Q. So you were one of the people that 11 was being invited to get on a conference call to 12 hear what Mr. Zazenski from Luzenac had to say about 13 some intelligence that he knew about the NTP process 14 on talc, right? 15 A. Yeah. 16 MS. BROWN: Foundation. 17 A. I'm sorry, go ahead. 18 MS. BROWN: I'm sorry, John, just 19 objection; foundation. 20 A. Yeah, I mean, it says that Zazenski 21 had some intelligence he had been hearing about and 22 it looks like the same people who were copied on, 23 you know, the other NTP issues from J&J are included 24 on this e-mail, as well as others. 25 Q. And Dr. Wehner was invited to hear</p>

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<p style="text-align: right;">Page 432</p> <p>1 about the intelligence that Mr. Zazenski knew about 2 the NTP talc process, right; Dr. Wehner? 3 A. He's on the list, and I assume it's 4 because he was consulting on that issue to the 5 company. 6 Q. And does an independent scientist 7 participate in conference calls to hear about 8 intelligence where the United States Government is 9 considering talc as a carcinogen? 10 MS. BROWN: Objection; lacks 11 foundation; calls for speculation; argumentative. 12 A. I can't answer that question because 13 now you're talking about intelligence. I don't even 14 know what that means. And in terms of who the 15 company invites on a call, I don't have any control 16 of that. You know, they invite who they think they 17 need input from and this was an NTP issue and Wehner 18 was part of the consultancy for that, so that's why 19 they copied him. 20 Q. I mean, you, John O'Shaughnessy, were 21 especially important to this call to hear about the 22 intelligence that Rich Zazenski had been hearing 23 about the NTP process on talc, right? 24 A. Well, it says, "John O'Shaughnessy is 25 especially important to this call." That's what it</p>	<p style="text-align: right;">Page 434</p> <p>1 A. It was a scientific issue that would 2 be very important in litigation that would come up 3 and arise, yes. It was not a litigation issue, it 4 was a regulatory issue, but like a lot of regulatory 5 and governmental issues, it played a huge role in 6 litigation and that's why they're keeping me 7 informed and that's why I wanted to be kept 8 informed. 9 Q. And is that why you were especially 10 important to a strategy call about the talc NTP 11 review? 12 MS. BROWN: Well, that lacks 13 foundation, calls for speculation. 14 A. I don't know what Steve Mann meant by 15 that, but they did, thankfully, consider their 16 attorneys to be important members of, you know, the 17 advice they get. 18 Q. Okay. And you responded at the top 19 of this e-mail chain that you could not make this 20 call that Dr. Mann said you were especially 21 important to, but that you would follow-up with 22 Steve Mann, right? 23 A. Yeah, I said I can't make the call, 24 I'm in an all-day meeting, can't break away, I will 25 follow up with Steve Mann. And, you know, if they</p>
<p style="text-align: right;">Page 433</p> <p>1 says. And, you know, they included me on most 2 things because they knew I was handling litigation 3 with respect to the product and that they kept me 4 informed of basically all they were doing. 5 Q. Well, Dr. Mann says here that John 6 O'Shaughnessy, you are especially important to this 7 call, right? 8 A. That's what he says, yeah. 9 Q. He doesn't say anything about 10 litigation, right? 11 A. Say anything about it, no. 12 Q. And I want you to assume that Dr. 13 Mann has testified under oath that he never worked 14 on any litigation while at Johnson & Johnson. Would 15 you dispute Dr. Mann's sworn testimony if that's 16 what he said? 17 MS. BROWN: I object as lacking 18 foundation. 19 A. I -- I -- I'm not in a position to 20 dispute or not dispute. And it doesn't matter if he 21 never touched or worked on litigation. He knew I 22 was responsible for it. 23 Q. Do you agree, sir, that the NTP's 24 review of talc as a carcinogen at this time in 2004 25 was not a litigation?</p>	<p style="text-align: right;">Page 435</p> <p>1 requested, if the company ever requested my input or 2 presence as their attorney, I would always 3 follow-up, I hope I would anyway, and respond, so 4 that's why I said that. 5 Q. So, Mr. O'Shaughnessy, just to sort 6 of get the dates here, in this time period in 2004, 7 the NTP, as we've discussed, was considering listing 8 talc as a carcinogen, right? 9 A. I think, yes, that's what the meeting 10 was about. 11 Q. And Johnson & Johnson and Johnson & 12 Johnson's talc supplier, Luzenac, had told the NTP 13 that there was no asbestos in cosmetic talc, right? 14 A. That was Johnson & Johnson's position 15 and separately I believe it was Luzenac's position 16 from what you showed me, but I don't know all of the 17 communications Luzenac had with NTP. I'm not privy 18 to that. 19 Q. Okay. Certainly you know, based upon 20 your work at Johnson & Johnson and the documents 21 we've looked at, that in 2004 Johnson & Johnson was 22 telling the NTP, the National Toxicology Program, 23 that there was no asbestos in cosmetic talc, right? 24 A. Yes, their assessment of the science 25 and the information and the testing was that, yes.</p>

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<p style="text-align: right;">Page 436</p> <p>1 Q. In 2004, sir, isn't it true that you 2 knew that a laboratory called "Forensic Analytical" 3 had analyzed Johnson's Baby Powder and reported 4 finding asbestos? 5 MS. BROWN: Objection; misstates the 6 evidence; lacks foundation. 7 A. I don't recall that, but from time to 8 time I think the company did receive reports from 9 outside people that, you know, they had tested the 10 talc and it contained asbestos, and, you know, the 11 company would follow-up with those and investigate 12 those. I'm not specifically aware of this one. I'm 13 not specifically recalling this one. 14 Q. Okay. Let's look at Exhibit 42 to 15 your deposition. Exhibit 42 to your deposition is a 16 fax and it's dated February 24, 2004, correct? 17 A. Yes. 18 Q. And at the top it says the fax is 19 from J&J Corporate PR, correct? 20 A. Yes. 21 Q. Okay. And the fax is to Steven Mann, 22 who we've talked about, correct? 23 A. Right. 24 Q. And the fax is from Marc Monseau from 25 Johnson & Johnson Corporate communications, correct?</p>	<p style="text-align: right;">Page 438</p> <p>1 Colamarino from the Johnson & Johnson public 2 relations department would be calling Dr. Steve Mann 3 about this testing of Johnson's Baby Powder, right? 4 A. Yes. 5 Q. And -- 6 MS. BROWN: Objection. 7 BY MR. BLOCK: 8 Q. And if we go into the document 9 there's a letter, February 23rd, 2004, to Mr. Marc 10 Monseau, Johnson & Johnson, from a person at KCRA 11 TV. 12 Do you see that? 13 A. Yes. 14 Q. And it says one of the items tested 15 was Johnson's Baby Powder which tested at above 16 normal levels of asbestos. 17 Do you see that? 18 A. I do. 19 Q. And then it says, "I am enclosing a 20 copy of the test and results for you to look over." 21 Is that what it says in this letter 22 to Mr. Monseau of Johnson & Johnson? 23 A. Yes. 24 Q. And then if you turn the page and 25 look at the lab report, do you see that it says</p>
<p style="text-align: right;">Page 437</p> <p>1 A. Yes. 2 Q. And the subject of the fax is 3 asbestos, right? 4 A. Yes. 5 Q. And the fax says, "Last week we were 6 contacted by a reporter at a Sacramento television 7 station who wanted to get our reaction to a test 8 they performed on Johnson's Baby Powder. She has 9 since sent me the attached cover letter and lab 10 results, which Sarah Colamarino suggested I share 11 with you. Can you please review?" 12 Do you see where it says that? 13 A. I do. 14 MS. BROWN: Lacks foundation. 15 BY MR. BLOCK: 16 Q. And then it says, "Sarah will be 17 calling you shortly to discuss." 18 Do you see that? 19 A. I do. 20 Q. And then it says, "In the meantime, 21 if you have any questions, please give me a call. 22 Marc Monseau." 23 Do you see that? 24 A. I do. 25 Q. All right. So this says that Sarah</p>	<p style="text-align: right;">Page 439</p> <p>1 Forensic Analytical at the top? 2 A. Yes. 3 Q. And do you see the words "asbestos in 4 bulk material"? 5 A. I do. 6 Q. And do you see it says -- see where 7 it says, "transmission electron microscopy"? 8 MS. BROWN: Let me get my objection 9 on the record, please. This document lacks 10 foundation. 11 A. Yes, I am sorry. I've been hearing, 12 I don't know, Miss Brown, if you're objecting 'cause 13 sometimes I hear garbled -- 14 MS. BROWN: Okay, I'll try to speak a 15 little louder. 16 A. Yeah, no, I hear it fine now. 17 MS. BROWN: Thank you, John. 18 A. I'm sorry, Mr. Block, can you 19 continue? 20 Q. Right. Do you see that the document 21 says, "Forensic Analytical," on the top? 22 A. Yes. 23 Q. And you see it says the words, 24 "asbestos in bulk material," on the top? 25 A. Yes.</p>

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<p style="text-align: right;">Page 440</p> <p>1 Q. And you see under that it says, 2 "transmission electron microscopy," correct? 3 A. It does, yes. 4 Q. And it says, "Date received, December 5 19, '03." 6 Do you see that? 7 A. Yes. 8 Q. And then it says, "Date analyzed and 9 date reported, January 5, 2004"? 10 A. Yes. 11 Q. And then it says, "Analytical 12 results," and there's a table. 13 Do you see that? 14 A. Yeah. I'm just going to get my 15 glasses. I'm not seeing this too well, even on the 16 screen. 17 Q. All right. I can blow it up a little 18 more. 19 A. That's helpful. 20 Q. Okay. Great. 21 Do you see there's a table there that 22 says, "Analytical results"? 23 A. Yes. 24 Q. And you see it says, "Client sample 25 number"?</p>	<p style="text-align: right;">Page 442</p> <p>1 February 24, 2004. Exhibit 43, there was a meeting 2 with the subject "Powder" scheduled on March 3rd, 3 2004, which is a week later, right? 4 A. I'm sorry. I'm on 43A. What should 5 I be looking at? 6 Q. I'm sorry. 43, sir. 7 A. Okay. My mistake. Yeah, I see that 8 document now. 9 Q. So one week later, a meeting was 10 scheduled and the subject of the meeting was powder, 11 right? 12 A. Yes. 13 Q. And Miss Telofski scheduled the 14 meeting, right? 15 A. Yes. 16 Q. And Miss Colamarino was one of the 17 required attendees at the meeting, right? 18 A. Yes. 19 Q. And Miss Colamarino is mentioned as 20 one of the people who knew about the Forensic 21 Analytical test results, right? 22 A. I think she was. I don't know, I'm 23 losing track. She was mentioned in that prior 24 document, right? 25 Q. Right. "That Sarah Colamarino</p>
<p style="text-align: right;">Page 441</p> <p>1 A. Yes. 2 Q. And it says, "TEM," and then it says, 3 "Johnson's Baby Powder." 4 Do you see those words? 5 A. Yeah. 6 Q. And then in the row with Johnson's 7 Baby Powder, it says, "Asbestos weight percent." 8 Do you see that? 9 A. I do. 10 Q. And then it says, "0.2 percent." 11 Do you see that? 12 A. 0.20, yes. 13 Q. All right. And then it says, 14 "Asbestos type, AN." 15 Do you see that? 16 A. Yes, yeah. 17 Q. And do you see at the bottom, it 18 says, "AN," and the words, "anthophyllite"? 19 A. I, yes, okay. 20 Q. All right. Now, you knew about this, 21 didn't you, sir? 22 MS. BROWN: Objection; foundation. 23 A. I don't, I don't recall it. 24 Q. Let's go to Exhibit 43. So the fax 25 we just looked at from Mr. Monseau to Mann was</p>	<p style="text-align: right;">Page 443</p> <p>1 suggested I share with you." So she knew about it, 2 right? 3 A. Yes, she had it. 4 Q. All right. And then the fax is from 5 Mr. Monseau to Dr. Mann, and both Dr. Mann -- Dr. 6 Mann is a required attendee at the meeting as well? 7 A. Yeah, he's listed as required. 8 Q. So one week after that fax about the 9 Forensic Analytical lab results reporting asbestos 10 in Johnson's Baby Powder, a meeting was scheduled 11 that included Sarah Colamarino, Dr. Steven Mann, 12 you, and others, correct? 13 A. Yes. 14 Q. And if you go to the next page, it 15 says, "Meeting will actually be tomorrow, March 16 4th." So it was bumped back a day, right? The 17 meeting was bumped from March 3rd, 2004, to March 18 4th? 19 A. Yeah, I see that, meeting will be 20 tomorrow instead. 21 Q. Instead. All right. So then we go 22 to the next page, we see that there's a meeting 23 scheduled for March 4, 2004, which is eight days 24 after that fax regarding the Forensic Analytical 25 testing, and it's scheduled for a one-hour meeting,</p>

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<p style="text-align: right;">Page 444</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. And certainly at this one-hour</p> <p>4 meeting that you had with Dr. Mann and</p> <p>5 Miss Colamarino, you would have discussed the</p> <p>6 Forensic Analytical testing that was in that fax</p> <p>7 just eight days before?</p> <p>8 MS. BROWN: Hold on. First of all, I</p> <p>9 object as lacking foundation.</p> <p>10 Second of all, Mr. O'Shaughnessy, I</p> <p>11 will instruct you not to disclose any legal advice</p> <p>12 you may have provided to anyone at Johnson &</p> <p>13 Johnson.</p> <p>14 A. I don't know if I attended the</p> <p>15 meeting or not. I don't recall. I am often</p> <p>16 included on lists for meetings that I could not</p> <p>17 attend because of my schedule, so I don't know if I</p> <p>18 was at this meeting or not.</p> <p>19 Q. Do you -- do you admit that you</p> <p>20 e-mailed Sarah Colamarino and Steven Mann about this</p> <p>21 Forensic Analytical testing?</p> <p>22 MS. BROWN: Foundation.</p> <p>23 A. I might have. I don't recall an</p> <p>24 e-mail. I might have had a communication with them</p> <p>25 about it. I assume I did if I'm listed in some</p>	<p style="text-align: right;">Page 446</p> <p>1 going to see it. Should we pull the group together</p> <p>2 to determine how to proceed?"</p> <p>3 Is that what it says?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So now is it clear to you that</p> <p>6 you were a part of the group of people at J&J that</p> <p>7 was dealing with this issue of this TV station</p> <p>8 sending these lab results showing asbestos in</p> <p>9 Johnson's Baby Powder?</p> <p>10 A. I was a person --</p> <p>11 MS. BROWN: Objection; lacks</p> <p>12 foundation.</p> <p>13 A. I was a person who was informed of</p> <p>14 what the company was doing. They were keeping me</p> <p>15 informed, again, because this is an issue that may</p> <p>16 come up in litigation.</p> <p>17 Q. And it's your sworn testimony today</p> <p>18 here that you didn't direct anyone to do anything</p> <p>19 with respect to this Forensic Analytical testing,</p> <p>20 correct?</p> <p>21 MS. BROWN: Misstates testimony.</p> <p>22 A. No, I don't direct people to do</p> <p>23 anything.</p> <p>24 Q. Okay. Well, let's look at what the</p> <p>25 e-mails say. The next sentence of the e-mail is,</p>
<p style="text-align: right;">Page 445</p> <p>1 fashion. A lot of times I would have phone calls</p> <p>2 instead of going to meetings with people to catch up</p> <p>3 with them, 'cause a lot of times I would be out of</p> <p>4 town or not available for other reasons so I would</p> <p>5 have to play a little catch-up. I did a lot of</p> <p>6 communicating with the company by phone.</p> <p>7 Q. Go to Exhibit 43A to your deposition.</p> <p>8 And this is an e-mail chain, and why don't we look</p> <p>9 at it from the bottom up so we could see the</p> <p>10 progression.</p> <p>11 So if you look at the very first</p> <p>12 e-mail in the chain of Exhibit 43A, it's dated</p> <p>13 April 6, 2004.</p> <p>14 A. The bottom one, yes, I see it.</p> <p>15 Q. So this is a month after that meeting</p> <p>16 was scheduled where you were in the meeting with</p> <p>17 Sarah Colamarino and Dr. Steven Mann, right?</p> <p>18 A. It's a month after those</p> <p>19 communications you just showed me. Like I said, I</p> <p>20 don't recall if I was in the meeting or not.</p> <p>21 Q. Okay. And Steven Mann writes to you</p> <p>22 and Sarah Colamarino, "Sarah/John, I have not</p> <p>23 received the talc sample from the reporter or the</p> <p>24 label information they told Sarah they would send.</p> <p>25 It has been a long time so I am doubtful we are</p>	<p style="text-align: right;">Page 447</p> <p>1 Dr. Mann says to you and Miss Colamarino, "I am</p> <p>2 afraid they might surprise us down the road if all</p> <p>3 of a sudden they decide to run a story."</p> <p>4 Do you see that?</p> <p>5 A. Yes, yes.</p> <p>6 Q. In terms of "they, they decide to run</p> <p>7 a story," that's the TV station that sent Johnson &</p> <p>8 Johnson the lab results showing asbestos in</p> <p>9 Johnson's Baby Powder, right?</p> <p>10 A. Yes. And that's another reason why</p> <p>11 they would keep me informed because it's a potential</p> <p>12 publicity issue and that can impact the litigation</p> <p>13 as well.</p> <p>14 Q. You just said under oath that you</p> <p>15 would not have directed anyone to do anything about</p> <p>16 this, right?</p> <p>17 A. I don't direct people at the company,</p> <p>18 no.</p> <p>19 Q. But on April 7, 2004, you were</p> <p>20 directing Sarah Colamarino in this e-mail, weren't</p> <p>21 you?</p> <p>22 A. No.</p> <p>23 Q. All right. So let's look at the</p> <p>24 e-mail, April 7, 2004, 8:23 a.m., from John</p> <p>25 O'Shaughnessy, right? That's an e-mail from you?</p>

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<p style="text-align: right;">Page 448</p> <p>1 A. Yes.</p> <p>2 Q. And you write Steven Mann and Sarah</p> <p>3 Colamarino, and you say, "Sarah, can we redouble our</p> <p>4 efforts to get this?"</p> <p>5 A. Yes.</p> <p>6 Q. So you're asking Sarah Colamarino, a</p> <p>7 public relations person from Johnson & Johnson, to</p> <p>8 redouble her efforts to get the talc sample from the</p> <p>9 TV reporter who sent Johnson & Johnson the lab</p> <p>10 results, correct?</p> <p>11 A. I'm asking, they're apparently trying</p> <p>12 to do that without much success, so I say, hey, can</p> <p>13 we try again. That's all I'm saying.</p> <p>14 Q. And --</p> <p>15 A. -- person with --</p> <p>16 Q. Okay.</p> <p>17 A. -- the TV station, so...</p> <p>18 Q. All right. And we saw earlier that</p> <p>19 the lab results were from a lab called "Forensic</p> <p>20 Analytical," true?</p> <p>21 A. Yes.</p> <p>22 Q. And you didn't direct anyone to</p> <p>23 contact the lab Forensic Analytical to get</p> <p>24 information from the scientists at the lab, right?</p> <p>25 A. No, that wasn't my role at the</p>	<p style="text-align: right;">Page 450</p> <p>1 story was moving forward quickly."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And then Miss Colamarino, from the</p> <p>5 public relations department of Johnson & Johnson,</p> <p>6 says, "I've always been concerned about provoking</p> <p>7 the story."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Johnson & Johnson was concerned about</p> <p>11 provoking the TV station in terms of the TV station</p> <p>12 running a story about the lab results showing</p> <p>13 asbestos in Johnson's Baby Powder, correct?</p> <p>14 MS. BROWN: I object, it misstates</p> <p>15 the document.</p> <p>16 A. Sarah Colamarino wrote that, but to</p> <p>17 say it was J&J's position, I don't think that's</p> <p>18 right.</p> <p>19 Q. Then let's see what Mr. Monseau, he</p> <p>20 then responds. He says, "It doesn't seem they are</p> <p>21 actively pushing the story."</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And, you know, I'd just like to know</p> <p>25 from you, do you have any evidence, as someone who</p>
<p style="text-align: right;">Page 449</p> <p>1 company. The company does its own follow-up of</p> <p>2 situations like this based on what they think they</p> <p>3 need to do based on their expertise.</p> <p>4 Q. You're asking Sarah Colamarino to</p> <p>5 redouble her efforts with the reporter, correct?</p> <p>6 A. Yeah, to get the sample. I said can</p> <p>7 we redouble it. She was concerned that they had not</p> <p>8 been responsive apparently, and so I was, in</p> <p>9 essence, saying can we try again. That's all.</p> <p>10 Q. Did you ever say to anyone at Johnson</p> <p>11 & Johnson that, you know, we should have our</p> <p>12 scientists reach out to the laboratory that found</p> <p>13 asbestos in the Johnson's Baby Powder so we could</p> <p>14 look into this as a scientific matter?</p> <p>15 MS. BROWN: Objection; foundation.</p> <p>16 A. No, J&J would decide to do what they</p> <p>17 felt appropriate to investigate a particular issue.</p> <p>18 I didn't give that to them. That wouldn't be my</p> <p>19 role.</p> <p>20 Q. After your e-mail, let's go further</p> <p>21 up the e-mail chain, Sarah Colamarino responds to</p> <p>22 you and Dr. Mann and says, "Hi, John and Steve: I</p> <p>23 have contacted the reporter three times for the</p> <p>24 sample. The last contact was about two and a half</p> <p>25 weeks ago. I did not get the impression that the</p>	<p style="text-align: right;">Page 451</p> <p>1 was involved in this, that Johnson & Johnson ever</p> <p>2 attempted to contact the laboratory that found</p> <p>3 asbestos in Johnson's Baby Powder, the laboratory</p> <p>4 called "Forensic Analytical"?</p> <p>5 MS. BROWN: Asked and answered; lacks</p> <p>6 foundation.</p> <p>7 A. I have no specific recollection of</p> <p>8 it, but it appears to me that regardless that the</p> <p>9 story didn't seem to be a priority, Mr. Monseau</p> <p>10 said, hey, let's try again to get the sample. So</p> <p>11 they tried to get the sample. I don't know what the</p> <p>12 scientists did on their end.</p> <p>13 Q. The sample, sir, you understand from</p> <p>14 looking at the lab report in Exhibit 42 that the</p> <p>15 sample was tested by the laboratory called "Forensic</p> <p>16 Analytical," right?</p> <p>17 A. Yeah, but for some reason and, you</p> <p>18 know, Sarah Colamarino is trying to get it, I'm just</p> <p>19 reading it now, trying to get the sample and I'm</p> <p>20 trying to see from the reporter, okay. She's trying</p> <p>21 to follow-up with the reporter.</p> <p>22 Q. And the lab results were signed, the</p> <p>23 lab results finding asbestos in Johnson's Baby</p> <p>24 Powder were signed by Mark Floyd, supervisor of the</p> <p>25 laboratory.</p>

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<p style="text-align: right;">Page 452</p> <p>1 Do you see that?</p> <p>2 A. That's what it says.</p> <p>3 Q. And as someone who was involved in</p> <p>4 the process of looking into this, do you have any</p> <p>5 evidence that anyone ever contacted Mark Floyd to</p> <p>6 ask him about these findings of asbestos in</p> <p>7 Johnson's Baby Powder?</p> <p>8 A. No, but that --</p> <p>9 MS. BROWN: Objection.</p> <p>10 A. No, but I wouldn't necessarily had</p> <p>11 that or know that because that's an issue that the</p> <p>12 company would independently follow-up on.</p> <p>13 Q. Did Johnson & Johnson send the</p> <p>14 Forensic Analytical lab report that found asbestos</p> <p>15 in Johnson's Baby Powder to the National Toxicology</p> <p>16 Program that was considering whether talc was a</p> <p>17 carcinogen?</p> <p>18 MS. BROWN: Speculation.</p> <p>19 A. I wouldn't know that, be able to know</p> <p>20 that.</p> <p>21 Q. Did Johnson & Johnson ever send this</p> <p>22 lab report that it received by fax with the Forensic</p> <p>23 Analytical lab results to anyone outside of Johnson</p> <p>24 & Johnson?</p> <p>25 MS. BROWN: He never saw the lab</p>	<p style="text-align: right;">Page 454</p> <p>1 it. I don't recognize it.</p> <p>2 Q. Do you think you would have been</p> <p>3 e-mailing about the Forensic Analytical lab results</p> <p>4 as you were in 2004 and never looked at those lab</p> <p>5 results?</p> <p>6 A. Sure. That's entirely possible.</p> <p>7 They sent me an e-mail saying it was a positive</p> <p>8 sample they were trying to get and I just said hey,</p> <p>9 can we redouble our efforts to get it.</p> <p>10 Q. And even after you found out about</p> <p>11 the Forensic Analytical lab results finding asbestos</p> <p>12 in Johnson's Baby Powder, you continued to allow</p> <p>13 Johnson & Johnson to certify in sworn</p> <p>14 Interrogatories in litigation that there was never</p> <p>15 asbestos in Johnson's Baby Powder, correct?</p> <p>16 MS. BROWN: I object; misstates the</p> <p>17 evidence; lacks foundation.</p> <p>18 And, Jerry, when you get to a good</p> <p>19 point, we've been going well over an hour, can we</p> <p>20 take a break before the next exhibit?</p> <p>21 MR. BLOCK: Let's have the question</p> <p>22 read back.</p> <p>23 (The following Question is read back:</p> <p>24 "QUESTION: And even after you found</p> <p>25 out about the Forensic Analytical lab results</p>
<p style="text-align: right;">Page 453</p> <p>1 report. I object on foundation grounds and calling</p> <p>2 for speculation.</p> <p>3 A. I wouldn't know. You would have to</p> <p>4 ask people at the company.</p> <p>5 Q. So it's your testimony that even</p> <p>6 though you were e-mailing about these lab results in</p> <p>7 2004, that the first time you ever saw these lab</p> <p>8 results from Forensic Analytical was when I showed</p> <p>9 them to you today?</p> <p>10 A. That's not my testimony. My</p> <p>11 testimony is I received whatever was in the e-mail,</p> <p>12 I don't know if I received the attachment or even</p> <p>13 saw it. I don't recognize it. I have no</p> <p>14 recollection of it. So that's my testimony.</p> <p>15 Q. All right. So your testimony is that</p> <p>16 even though you were e-mailing about the lab results</p> <p>17 from Forensic Analytical finding asbestos in</p> <p>18 Johnson's Baby Powder in 2004, you're not sure if</p> <p>19 you ever reviewed those lab results, correct?</p> <p>20 MS. BROWN: Misstates testimony, I</p> <p>21 object, and it lacks foundation.</p> <p>22 A. No, that's not my testimony.</p> <p>23 Q. Did you review the Forensic</p> <p>24 Analytical lab results in 2004: Yes or no?</p> <p>25 A. I have no idea. I don't recollect</p>	<p style="text-align: right;">Page 455</p> <p>1 finding asbestos in Johnson's Baby Powder, you</p> <p>2 continued to allow Johnson & Johnson to certify in</p> <p>3 sworn Interrogatories in litigation that there was</p> <p>4 never asbestos in Johnson's Baby Powder, correct?")</p> <p>5 A. I'm having trouble answering the</p> <p>6 question because your introduction to the question</p> <p>7 is even though I had this lab report, and then you</p> <p>8 connect it up with those interrogatories. To me</p> <p>9 they're two different things and I can't answer that</p> <p>10 question.</p> <p>11 Q. Even after you reviewed -- strike</p> <p>12 that?</p> <p>13 Even after you knew that Forensic</p> <p>14 Analytical had found asbestos in Johnson's Baby</p> <p>15 Powder in 2004, you know that Johnson & Johnson</p> <p>16 continued to take the position that there was never</p> <p>17 asbestos in Johnson's Baby Powder, correct?</p> <p>18 MS. BROWN: Same objection; and asked</p> <p>19 and answered.</p> <p>20 A. Yeah, the only way I can answer that</p> <p>21 is, look, Johnson & Johnson's position has been the</p> <p>22 same, as you stated, that there was no asbestos in</p> <p>23 its baby powder. As far as connecting that up with</p> <p>24 some report that I don't even know I saw or we don't</p> <p>25 even know was accurate, it was not our company, I</p>

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<p style="text-align: right;">Page 456</p> <p>1 can't connect the two up. 2 Q. And -- 3 A. And the Interrogatories and those 4 answers, yes, they went out the way they were at 5 that time because they were accurate. 6 Q. And you just said that the position 7 of Johnson & Johnson was that there was never 8 asbestos in Johnson's Baby Powder and as you've 9 testified to, that was always Johnson & Johnson's 10 position when you were with the company, right? 11 A. That's right. 12 Q. And that was always the position that 13 Johnson & Johnson took in all of its litigations 14 involving Johnson's Baby Powder, correct? 15 A. As far as -- yes, I believe, as far 16 as I'm aware. I left the company in 2019 -- 2018, 17 but that's true, yes, up until the time I -- 18 Q. And during the time that you worked 19 at Johnson & Johnson, Johnson & Johnson told courts, 20 opposing attorneys, and anyone involved in these 21 lawsuits that Johnson's Baby Powder never contained 22 asbestos, right? 23 A. Was asbestos-free, those 24 representations were made, yeah. 25 Q. Okay.</p>	<p style="text-align: right;">Page 458</p> <p>1 Mr. O'Shaughnessy, I have no further 2 questions at this time. 3 MS. BROWN: Okay. So this is Alli 4 Brown, I just want to take five minutes to set up my 5 Elmo to show a few documents during my exam of 6 Mr. O'Shaughnessy and we'll be ready to proceed. 7 MR. BLOCK: Okay. Can we just go to, 8 could we just exclude Mr. O'Shaughnessy, I just have 9 some procedural questions I want to discuss? 10 MS. BROWN: Okay. 11 (Witness out of Zoom meeting.) 12 MR. BLOCK: So I need to receive the 13 documents -- 14 MS. BROWN: They're yours. I'm only 15 using your documents. 16 MR. BLOCK: Oh, thank you. Okay. So 17 when you use them, obviously just refer to the 18 numbers that I have used and so the record reflects 19 that and I know it as well. 20 MS. BROWN: Actually, I misspoke, 21 there's one additional document which I will e-mail 22 you right now. 23 MR. BLOCK: Yeah, so please e-mail me 24 that document, I appreciate that, and when do you 25 want to get started, five minutes?</p>
<p style="text-align: right;">Page 457</p> <p>1 MR. BLOCK: We can take a break, 2 thank you. 3 MS. BROWN: Okay, great. Let's take 4 ten minutes, please. Thank you. 5 VIDEOGRAPHER: Stand by. Going off 6 the record, 2:18 p m. 7 This is the end of Media Unit 3. 8 (Recess: 2:18 p m. to 2:28 p.m., 9 Eastern Standard Time.) 10 VIDEOGRAPHER: Going back on the 11 record, 2:28 p m. 12 This is the beginning of Media Unit 13 4. Okay. 14 MR. BLOCK: Mr. O'Shaughnessy, I have 15 no further questions at this time. 16 VIDEOGRAPHER: Looks like 17 Mr. O'Shaughnessy is muted. 18 MS. BROWN: That's great, Jerry, but 19 I wish you had told me -- 20 MR. BLOCK: Excuse me, let's go back 21 on the record. Let's start over and unmute the 22 witness, please. 23 A. I am now unmuted, but I did hear you 24 on audio. 25 Q. We're back on the record.</p>	<p style="text-align: right;">Page 459</p> <p>1 MS. BROWN: Yeah, let's take ten just 2 so I can make sure the Elmo works. 3 MR. BLOCK: All right. In the 4 meantime I'll look for that e-mail. Thank you. 5 MS. BROWN: Thanks, Jerry. 6 VIDEOGRAPHER: Off the record, 7 2:30 p.m. 8 (Recess: 2:30 p m. to 2:42 p.m., 9 Eastern Standard Time.) 10 VIDEOGRAPHER: Back on the record, 11 2:42 p.m. Back on the record. Okay. 12 CROSS-EXAMINATION BY MS. BROWN: 13 Q. Good afternoon, Mr. O'Shaughnessy. 14 A. Hi. 15 Q. I am really glad to have you here and 16 to be able to introduce you to our jurors. 17 Would you tell them who you are and 18 where you're from? 19 A. Well, I'm John O'Shaughnessy and as 20 you know, I've been testifying on behalf of my role 21 as an attorney with Johnson & Johnson. 22 I grew up in New York City in the 23 bureau of the Bronx. I went to school there and I 24 went to college, a small college in New Rochelle 25 which is just outside the Bronx, and from there I</p>

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<p style="text-align: right;">Page 460</p> <p>1 was employed as a truck driver and then I went to 2 law school at New York Law School in lower 3 Manhattan, New York City. 4 Q. Did you always want to be a lawyer, 5 Mr. O'Shaughnessy? 6 A. No, I thought I would be an 7 oceanographer at one point, but then I wasn't 8 getting anywhere with that, so I became interested 9 in the law. Actually it was from watching the 10 Watergate hearings. 11 Q. Tell me what you mean by that. 12 A. Back in the '70s, you know, there 13 were hearings on Nixon's administration and I just 14 thought that that method of inquiry and they were 15 all lawyers and I said, you know, that looks 16 interesting, I'd kind of like to try that, so I went 17 to law school, you know, not knowing how well I'd 18 do, I wasn't really one to hit the books a lot, but 19 I kind of disciplined myself to do that in law 20 school, and graduated in 1978. 21 And I was hired by the Bronx district 22 attorney's office in New York, in the Bronx, as a 23 prosecutor in 1978. And I served there until 24 approximately 1982 when I was a member of the 25 homicide bureau and the major offense bureau and</p>	<p style="text-align: right;">Page 462</p> <p>1 office in 1982, what did you do next? 2 A. I went to a firm in Manhattan called 3 "Martin Clearwater & Bell," which is a medical 4 malpractice defense firm, so I was a trial attorney, 5 and I tried cases defending doctors and hospitals 6 primarily in and around New York City, Bronx, 7 Brooklyn, Queens, in state and Federal Court. 8 Q. And your testimony may be played 9 ultimately in a courtroom. Did you spend time when 10 you were at that firm in courtrooms a lot? 11 A. Yes, I tried cases. Yeah, I was in 12 court a lot. The same, of course, in the DA's 13 office. 14 Q. And how long did you stay at that 15 firm, sir? 16 A. I was with Martin Clearwater & Bell 17 for, I think, four years, three or four years. And 18 then I went to work at a corporation, the 19 International Playtex Corporation, as a litigation 20 attorney. At the time they had some products 21 involved in litigation, and so I was hired by them 22 and I dealt with litigation involving Playtex 23 products. 24 Q. And how long did you stay there? 25 A. I was with Playtex, I think, three</p>
<p style="text-align: right;">Page 461</p> <p>1 tried cases, criminal prosecutions, in that county. 2 Q. And, Mr. O'Shaughnessy, you mentioned 3 a little bit of your work earlier. You testified 4 about some of your work in the homicide division of 5 the DA's office. Can you give us an idea about what 6 your role and responsibility was there? 7 A. Well, the prosecutions there begin in 8 the grand jury and as part of that we would present, 9 you know, the homicide defendants that were arrested 10 recently, the cases would come in, you would deal 11 with the police and the law enforcement, and present 12 the case to a grand jury. 13 Part of that, as I mentioned during 14 the deposition, was we rotated through 24-hour 15 on-call duty. And I think the Bronx was the first 16 prosecutor's office in the country back at this 17 time, which is hard to believe, to use videotape, 18 when they videotaped a murder scene if we found a 19 body there or, and we would also videotape a 20 defendant upon the arrest, assuming, you know, he 21 waived his rights to a lawyer and we would take 22 statements on videotape. And then we would later, 23 like I explained in my testimony, that would later 24 be played in court. 25 Q. And when you were at the Bronx DA's</p>	<p style="text-align: right;">Page 463</p> <p>1 years. And that's when I moved to, was hired by 2 Johnson & Johnson, in 1987. 3 Q. So in 1987, is that when you started 4 at J&J? 5 A. That's right. 6 Q. And what was your title when you 7 started at Johnson & Johnson in 1987? 8 A. My title was, as I explained to 9 Mr. Block, was senior attorney, and when I come into 10 Johnson & Johnson I did primarily work on the 11 lawsuits from the, involved in a subsidiary called 12 "Ortho Pharmaceutical Corporation," and they were a 13 maker of various, various prescription products, 14 including contraception. And that's what I started 15 out by doing in 1987. 16 But Johnson & Johnson is, I assume 17 they still are, they're divided into three separate 18 business categories; consumer, and the talc we've 19 been talking about is in the consumer side of the 20 business; there's the medical device side of the 21 business, and then there's the pharmaceutical side 22 of the business. 23 So during my career at Johnson & 24 Johnson and through the time I was testifying, at 25 any given time I would be responsible for product</p>

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<p style="text-align: right;">Page 464</p> <p>1 liability litigation involving products from those 2 companies. So when I started with Johnson & Johnson 3 there were approximately well over 200 cases on the 4 pharmaceutical side of Ortho, and then I had also 5 managed litigation for a medical device company 6 called "Codman & Shurtleff" which made neurosurgical 7 instruments and tools. And then I had cases with a 8 company called Johnson & Johnson Orthopedics at the 9 time which made orthopedic implants. 10 And so I had cases in all of those 11 categories of the business. And besides that, 12 beginning in about 1991 I also started to do 13 employment litigation because we had a dramatic 14 uptick in cases and some employees, like a lot of 15 other companies with the passage of the 1991 Civil 16 Rights Act. 17 So I had cases in all those 18 categories and I also, you know, had, as an in-house 19 counsel, I would hire outside lawyers to work with 20 in the jurisdictions around the country. So I 21 worked with many, many firms around the country and, 22 you know, many, many lawyers during my career at 23 Johnson & Johnson. 24 Q. Can you give our jurors an idea, 25 Mr. O'Shaughnessy, you know, just on a general level</p>	<p style="text-align: right;">Page 466</p> <p>1 A. That's kind of it in a nutshell. 2 Q. Did you like working at Johnson & 3 Johnson, Mr. O'Shaughnessy? 4 A. Yeah, you know, I was there 31 years, 5 so I did enjoy it. You know, I didn't go into the 6 job thinking, well, I'm going to be here for 30 7 years. You go in and you, you know, and the next 8 thing you know a lot of time goes by. 9 But it was a privilege to work for 10 that company. They're a good company. It was a 11 great experience in terms of being a lawyer working 12 with excellent lawyers around the country, both 13 lawyers that represent Johnson & Johnson and even 14 lawyers that were suing Johnson & Johnson, many fine 15 and good attorneys. It was a privilege to work in 16 that sort of a practice. 17 Q. And did there come a time when you 18 retired from Johnson & Johnson? 19 A. Yeah, I retired in May first of 20 -- 20 2018. 21 Q. And do you have a family, 22 Mr. O'Shaughnessy? 23 A. I do have a wife and three children 24 and three grandchildren and one on the way. When I 25 was working at Johnson & Johnson I lived in New</p>
<p style="text-align: right;">Page 465</p> <p>1 when you were at Johnson & Johnson, what was a 2 typical day like for you working in the law 3 department? 4 A. Well, I was dealing with outside 5 cases and the outside counsel, I'm sorry, and it was 6 a lot of phone work with them, and, you know, my 7 responsibility was to make sure that our outside 8 counsel were adequately prepared to defend the cases 9 and that meant a whole kind of gamut of what we do 10 in litigation. It meant the ability to respond to 11 discovery, the making sure that we got the 12 appropriate and relevant information from each of 13 the companies on each of the products on each of the 14 cases we were dealing with, working with outside 15 counsel to make sure that we met our obligations in 16 court in terms of documents, discovery, timelines, 17 to make sure that the cases were prepared for trial, 18 and that would involve making sure we had the 19 appropriate witnesses from the company to explain to 20 the juries what the product was and why the company 21 would do what it did with respect to a product. And 22 also to make sure that we had witnesses who were 23 outside the company to testify to lend their 24 scientific expertise to the issue. 25 Q. Did --</p>	<p style="text-align: right;">Page 467</p> <p>1 Jersey and my kids were raised there and two out of 2 three live there. My daughter is a teacher in a 3 local school, my son-in-law is in financing, my 4 other son has his own little company trying to get 5 off the ground doing various production work. He 6 lives in the Bronx. 7 Q. And, sir, (inaudible) close by. 8 A. My other son lives in the Bronx. 9 Q. And have you been able to spend more 10 time with your family in your retirement? 11 A. Yeah, we just started to now. You 12 know, like a lot of other people with COVID that's 13 been interrupted, but fortunately, you know, no one 14 in my family was ill, so we're starting to have more 15 family time together, yes. 16 Q. Have you, since the time that you 17 were retired, Mr. O'Shaughnessy, in 2018, have you 18 spent any time studying or thinking about issues 19 regarding cosmetic talc? 20 A. No, no. I worked on talc, like I 21 said to Mr. Block, you know, day-to-day, you know, 22 responsibility for the case up to 2012, and then I 23 came back into working on talc in about 2016 in a 24 more limited fashion with the uptick in all the 25 litigation that the company is dealing with now.</p>

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<p style="text-align: right;">Page 468</p> <p>1 Q. Since you left the company in 2018, 2 have you spent really any time thinking about some 3 of the issues that you handled while you were there? 4 A. No, no, I, you know, look, I spent a 5 lot of time working on it. You know, I have my 6 views of it, but, you know, I've moved on now and 7 I'm trying to enjoy time. I spent a lot of time, 8 you know, working and a lot of time traveling, and 9 so one of the nice things about retirement is to 10 finally have some time which, you know, you have to 11 yourself, so it's mainly with family and friends and 12 interests, that sort of thing. 13 Q. And have you done your best here 14 today, Mr. O'Shaughnessy, to try and remember what 15 you can and answer counsel's questions truthfully 16 and accurately? 17 A. Yeah. And, you know, it is difficult 18 and I wish it weren't, but many of the issues I was 19 asked questions about, of course, happened, you 20 know, 25, 30 years ago, so my memory of it is 21 limited. And, you know, during the time I was 22 working on these cases with talc, like I said, I was 23 also working on a lot of other litigation, a lot of 24 other cases that involved kind of similar issues 25 with respect to science, you know, witnesses,</p>	<p style="text-align: right;">Page 470</p> <p>1 named W. Slivka. 2 Do you see that? 3 A. I do. 4 Q. Okay. And what was your 5 understanding, Mr. O'Shaughnessy, about why this 6 Worldwide Talc Steering Committee was formed? 7 A. My recollection is, and I think it's 8 evidenced in the document, is the companies, when 9 they sometimes have issues that are arising that 10 are, maybe a limited duration like this FDA meeting, 11 they will assemble a group to make sure that they 12 get the people with the relevant knowledge about the 13 issue on the same page that they have input from all 14 different areas of the corporation that are maybe 15 relevant to the particular issues, and this issue is 16 the FDA talc safety. 17 So, you know, the companies are big. 18 There's, each department has lots of people. And so 19 this is a way of coalescing it. And at this time, 20 you know, there was some publicity, I think, 21 beginning around the issues of talc and talc safety. 22 There were certainly lawsuits, which explained my 23 involvement, which, I was responsible for 24 litigation. And because the meeting was, you know, 25 it was an important meeting, scientific meeting,</p>
<p style="text-align: right;">Page 469</p> <p>1 communicating with company witnesses and outside 2 counsel. So, you know, distinguishing certain 3 things and being aware, do I remember certain 4 things, it's tough to do that after the passage of 5 time and given the amount of time I was spending on 6 different litigation. 7 Q. Mr. O'Shaughnessy, I want to go 8 through a couple of topics that counsel asked you 9 questions about and get a few more pieces of 10 information for our jurors. So I'm going to show 11 you what, I'm going to share my screen and show you 12 on the Elmo what counsel marked as Exhibit 2 to your 13 deposition. 14 And let me, it'll be Exhibit 2 in 15 your binder, and then I'll also put it up here on 16 the screen if that is helpful for you. 17 A. Sure. 18 Q. This document, Mr. O'Shaughnessy, 19 marked as Exhibit 2 to your deposition is a memo 20 dated September 22, 1993, and the subject is "J&J 21 Worldwide Talc Steering Committee." 22 Do you see that? 23 A. I do, yes. 24 Q. And the memo is addressed to 25 Dr. Hopkins, Mr. Leebaw, yourself, and an individual</p>	<p style="text-align: right;">Page 471</p> <p>1 Government agency, that would be something that 2 would come up, as it has, in litigation. 3 So I, as the litigation lawyer for 4 J&J, would want to know what the company, what it 5 was about to keep myself abreast of what the company 6 was doing and the position it was taking because 7 later on, the attorneys for J&J that I worked with 8 would have to, you know, do the same thing. They 9 would have to explain what the company did, who did 10 it on behalf of the company, and why. 11 Q. When it comes to the Worldwide Talc 12 Steering Committee, what was your role on that 13 committee, Mr. O'Shaughnessy? 14 A. As a lawyer, it was to give input 15 with respect to the legal cases, because, like I 16 said, there was some publicity around the legal 17 cases. And also, we did have legal cases. So 18 that's important for the company to know the status 19 of litigation. Because the litigation also 20 generates publicity, the company gets questions, the 21 company wants to respond. So they need to respond 22 in a knowing matter and that's why they get the 23 relevant people together. So that was my role on 24 the committee. 25 Q. And what was your understanding of</p>

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<p style="text-align: right;">Page 472</p> <p>1 the role of some of the other folks on the 2 committee; for example, Dr. Hopkins? 3 A. Dr. Hopkins was a scientific person 4 and he was a member of the company in England at the 5 time. But there was also a science organization, of 6 course, in New Jersey and he was part of that. So 7 he wouldn't be the only one that would be lending 8 effort to this FDA issue. He would be the 9 scientific person. And I guess from his end he 10 would coordinate and get the appropriate 11 information. 12 Same for Jeff Leebaw who was 13 responsible for corporate communications. So if a 14 company gets an inquiry from the media, I think many 15 companies do this, but Johnson & Johnson certainly 16 does, they have a communication group to make sure 17 that you respond to requests from the media and 18 information from outside the company in a knowing 19 and accurate way. 20 So the corporate communication group 21 kind of coalesces around that to make sure that the 22 responses are appropriate and accurate, and they 23 come from people who are aware of the issues rather 24 than having people not aware of the issues, you 25 know, talking to people outside the company.</p>	<p style="text-align: right;">Page 474</p> <p>1 had that they had on talc safety. So that includes 2 what the company usually does in situations like 3 this; they monitor publications, medical literature 4 and the public studies, regulatory actions. That's 5 very relevant because the FDA and other regulatory 6 agencies have certain rules and regulations that 7 impact the product as well. 8 So that's what would be going on by 9 those people. So, you know, when you have exposure 10 to that like I did, and I knew these people, you 11 know, of course, before this committee was formed 12 and had knowledge of talc, but you get to see it 13 again, you know, you get to see what they're doing, 14 what studies they relied on and what their thinking 15 was with respect to talc safety. 16 Q. And to your knowledge, 17 Mr. O'Shaughnessy, and through your work on the 18 Worldwide Talc Steering Committee, was anyone at the 19 company testing and monitoring talc for asbestos? 20 MR. BLOCK: Objection; foundation; 21 form. 22 A. I was aware that the company 23 regularly monitored and tested its talc product, 24 yes. 25 Q. And through your work on the Talc</p>
<p style="text-align: right;">Page 473</p> <p>1 Q. If we look at Exhibit 2, 2 Mr. O'Shaughnessy, the document states that the 3 objectives/responsibilities of the committee are, 4 "Number 1, to monitor publications, studies, 5 regulatory actions, legal cases, et cetera, 6 regarding talc." 7 Do you see that in the document? 8 A. I do. 9 Q. And were you the person, 10 Mr. O'Shaughnessy, on this committee who was in 11 charge of things like monitoring publications and 12 studies regarding talc? 13 A. No, that would be for the scientific 14 and technical people. 15 Q. Were you aware -- go ahead. 16 A. The scientific and medical people who 17 were on the committee and those that they work with. 18 Q. And can you describe for our jurors 19 generally what you became aware of through your 20 participation on the Worldwide Talc Steering 21 Committee that the scientists at the company were 22 doing to ensure the safety of talc? 23 A. Since the meeting was about talc 24 safety, it was to -- the scientists were coalescing 25 or gathering all of the information that the company</p>	<p style="text-align: right;">Page 475</p> <p>1 Steering Committee, Mr. O'Shaughnessy, were you 2 aware of whether or not anybody at the company was 3 monitoring the scientific literature regarding talc 4 safety? 5 A. Yes -- 6 MR. BLOCK: Objection; form; 7 foundation. 8 A. Yes, the company, the scientists at 9 the company monitored the publications and the 10 scientific area related to products. That's done at 11 all the companies. 12 Q. And one of the things that this 13 Exhibit 2 that we're looking at notes is that the 14 plan is to have the committee meet at least once 15 before a major FDA talc safety symposium scheduled 16 for late January 1994. 17 Do you see that? 18 A. I do. 19 Q. And through your participation on the 20 Worldwide Talc Steering Committee, what was your 21 understanding about the purpose of this FDA talc 22 safety symposium? 23 MR. BLOCK: Objection; form and 24 foundation. 25 A. I think, like we discussed during my</p>

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<p style="text-align: right;">Page 476</p> <p>1 prior testimony, to review, you know, the safety of 2 talc as of that point in time with respect to, you 3 know, issues with respect to talc in the lung and 4 issues with respect to talc and ovarian cancer. I 5 think this was the two-day meeting, if I'm not 6 mistaken. 7 Q. And I want to show you Exhibit 7 to 8 your deposition, which is an article you were shown 9 earlier today regarding that very meeting. 10 Do you recall some questions 11 regarding Exhibit 7 titled: "Talc: Consumer Uses 12 and Health Perspectives"? 13 A. Yes, I do. 14 Q. Okay. And one of the things that 15 counsel asked you questions, a couple questions 16 about had to do with the list of workshop 17 participants. 18 Do you remember those questions? 19 A. Yes. 20 Q. All right. And first of all, would 21 you agree, Mr. O'Shaughnessy, that there are a 22 number of different scientists and individuals 23 listed as workshop participants on this document at 24 Exhibit 7? 25 A. That's right.</p>	<p style="text-align: right;">Page 478</p> <p>1 about the fact that you didn't put something like 2 E-S-Q after your name to tell people that you're a 3 lawyer. 4 Do you remember those questions? 5 MR. BLOCK: Objection. 6 A. I do. 7 MR. BLOCK: Form. 8 BY MS. BROWN: 9 Q. Did you take any steps to try and 10 hide from the people at this meeting that you were a 11 lawyer? 12 MR. BLOCK: Objection; form. 13 A. No, I did not. 14 Q. I want to ask you a couple of 15 questions not about how your name is listed, but 16 about the substance of what happened at this 17 conference. 18 Can you read to our jurors, 19 Mr. O'Shaughnessy, and I'm sorry if I have to make 20 you grab your glasses, the sentence in Exhibit 7 21 that begins, "The workshop." 22 A. It says here, "The workshop was to 23 provide a forum on an updated discussion of the 24 origins, manufacture, characterization and 25 toxicology and epidemiology of talc. Principal</p>
<p style="text-align: right;">Page 477</p> <p>1 Q. And counsel asked you some questions 2 about how your name appears on the list. 3 Do you remember that? 4 A. Yes, yes. 5 Q. And the fact of the matter is, 6 Mr. O'Shaughnessy, after your name it doesn't say 7 Johnson & Johnson, right? 8 A. No, it doesn't. 9 Q. Did you provide the information about 10 how your name was going to be listed here in this 11 document? 12 MR. BLOCK: Objection; form and 13 foundation. 14 A. The company would have submitted my 15 name because I would be going with Johnson & 16 Johnson, so the company would handle those 17 arrangements. 18 Q. Did you take any steps to try and 19 hide the fact that you were employed by Johnson & 20 Johnson when you participated in this meeting? 21 MR. BLOCK: Objection; form and 22 foundation. 23 A. I've never done that for this meeting 24 or any other meeting. 25 Q. And counsel asked you some questions</p>	<p style="text-align: right;">Page 479</p> <p>1 focus of the meeting was on the latest toxicologic 2 and epidemiologic studies as they reflect on the 3 safe uses of talc in consumer products." 4 Q. And based on your participation, is 5 that a fair characterization of what happened at the 6 workshop? 7 MR. BLOCK: Objection; form and 8 foundation. 9 A. Yeah, I believe that's what it was 10 about, yes. 11 Q. And would you read to our jurors the 12 paragraph that begins, "Dr. Gilbertson"? 13 MR. BLOCK: Objection to form. 14 A. It says, "Dr. Gilbertson, FDA, 15 reviewed the harmonization of international 16 standards and regulations for cosmetic talc and its 17 consumer applications. In their joint evaluation, 18 talc has proven to be among the safest of all 19 consumer products." 20 Q. And based on your participation in 21 this two-day FDA talc symposium, do you recall an 22 evaluation that had a conclusion that talc had 23 proven to be among the safest of all consumer 24 products? 25 MR. BLOCK: Objection to form.</p>

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<p style="text-align: right;">Page 480</p> <p>1 A. Yeah, you know, I don't recall the 2 specifics of each day, but my take-away was that the 3 committee, FDA committee found that talc was safe, 4 consumer talc was safe. 5 MR. BLOCK: Objection; move to strike 6 as not responsive. 7 BY MS. BROWN: 8 Q. And I want to talk a little bit, 9 Mr. O'Shaughnessy, about a document you were shown 10 from some of your outside counsel at a law firm 11 called "Mehaffy & Weber." 12 Do you remember taking a look at a 13 document from some lawyers at Mehaffy & Weber? 14 A. Yes. 15 Q. And do you remember that the subject 16 of the document had to do with a potential 17 consulting expert named Dr. Alice Blount? 18 A. I recall that testimony, yeah. 19 Q. And one of the things that you 20 testified earlier in regards to those documents is 21 that you just don't really recall those letters. 22 Do you remember that? 23 MR. BLOCK: Objection to form. 24 A. I'm sorry, that's right. 25 Q. And to help us understand a couple</p>	<p style="text-align: right;">Page 482</p> <p>1 Q. Counsel started your deposition 2 showing you the Subpoena that you were served with 3 to testify here. 4 Do you remember that? 5 A. I do. 6 Q. Were you personally served with a 7 document requiring you to give testimony, 8 Mr. O'Shaughnessy? 9 A. Yeah, couple times they came, came to 10 my house, my wife answered the door and got me and I 11 took the documents from them. And then there was 12 one occasion where I drove to, from my house in 13 Pennsylvania, I drove to New Jersey to meet the 14 process server from, I believe it was Mr. Block's 15 office to accept service to facilitate the 16 deposition. 17 Q. And did you come, Mr. O'Shaughnessy, 18 to understand why it is that the plaintiffs' lawyers 19 wanted to talk to you in this litigation? 20 A. I think I have a good understanding 21 now after the deposition, yes. 22 Q. And what is that understanding? 23 MR. BLOCK: Objection to form. 24 A. Well, you know, based on the 25 questions I received today, and yesterday, about,</p>
<p style="text-align: right;">Page 481</p> <p>1 things, Mr. O'Shaughnessy, in 1998, can you tell our 2 jurors about how much of your time was spent on talc 3 and talc-related issues? 4 A. Yeah, so like I said, at the time I 5 was responsible for litigation involving companies 6 in different sectors, many different lawsuits, 7 hundreds of lawsuits in, you know, literally tens of 8 attorneys around the country. And the time I spent 9 on talc as opposed to those other areas in 10 employment law I would estimate to be less than 11 eight percent of my time. 12 Q. And in terms of your overall work as 13 a lawyer at Johnson & Johnson, did you have the 14 opportunity to meet with experts or learn about 15 experts in your role as a lawyer? 16 A. Well, yeah, you deal with the people 17 at the company who have expertise in the field and 18 then as part of the litigation as well, it's common 19 for both sides of litigation to hire outside experts 20 that have expertise to testify in court. And I had 21 some exposure with our outside counsel to that, yes. 22 Q. And when it comes to any one 23 particular expert or particular correspondence, do 24 you remember all of that perfectly? 25 A. No, no, it's very difficult.</p>	<p style="text-align: right;">Page 483</p> <p>1 you know, especially about the letter that mentioned 2 Dr. Blount and then the Interrogatory answers, it 3 seems to me that there, that plaintiffs want, the 4 lawyers want somehow to show that I had done 5 something wrong with respect to the information that 6 was in that letter and that these Answers to 7 Interrogatories that kept on referring back to that 8 letter were somehow wrong or that I misrepresented 9 information about Johnson & Johnson to the court and 10 to other lawyers. And that's what I believe. I 11 mean, you know -- 12 Q. And -- 13 MR. BLOCK: Move to strike as 14 nonresponsive. 15 BY MS. BROWN: 16 Q. Let me just ask you, 17 Mr. O'Shaughnessy, how does that make you feel? 18 MR. BLOCK: Objection to form. 19 A. Well, it's upsetting and it's also 20 disappointing. You know, after 40 years of 21 practicing law, after being a prosecutor, after, you 22 know, working in this profession alongside attorneys 23 who sued Johnson & Johnson and attorneys who 24 represent Johnson & Johnson, you know, to be accused 25 of wrongdoing is upsetting. And I don't think it's</p>

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<p style="text-align: right;">Page 484</p> <p>1 appropriate or right based upon the letter from 25 2 years ago in a litigation I don't recall and to use 3 that as a basis to impugn my credibility with the 4 court, I don't think it's right or fair and I know 5 it's not true. 6 MR. BLOCK: Move to strike as not 7 responsive. 8 BY MS. BROWN: 9 Q. Is it fair in your mind, 10 Mr. O'Shaughnessy, to suggest that because you don't 11 have a perfect memory of one letter from the spring 12 of 1998 that you did something wrong here? 13 MR. BLOCK: Objection to form. 14 A. No, I don't think that's right. 15 Q. Did you take your job at Johnson & 16 Johnson seriously, Mr. O'Shaughnessy? 17 A. I did. I took it very seriously and 18 I also took, throughout my career, very seriously as 19 my duty to not misrepresent things to other lawyers 20 of the court. I don't think I ever did that. 21 MR. BLOCK: Move to strike as not 22 responsive. 23 BY MS. BROWN: 24 Q. Mr. O'Shaughnessy, looking back on 25 your career, do you believe that you had a duty to</p>	<p style="text-align: right;">Page 486</p> <p>1 e-mail who were scientists and toxicologists and 2 scientific people. 3 Do you remember those? 4 A. I do. 5 Q. And first of all, as an initial 6 matter, Mr. O'Shaughnessy, during the 30 plus years 7 that you worked at Johnson & Johnson, did you ever 8 tell scientists what to do on scientific issues? 9 MR. BLOCK: Objection to form. 10 A. No, clearly not. 11 Q. You, sir, have a very impressive 12 career and a lot of experience and education, but 13 are you experienced in scientific issues? 14 MR. BLOCK: Objection to form. 15 A. No, I didn't take any science courses 16 beyond high school. 17 Q. Okay. Do you consider yourself 18 qualified to review epidemiology studies or asbestos 19 test results? 20 A. No. 21 Q. And when it came to cosmetic talc, 22 were you ever directing scientific decisions at 23 Johnson & Johnson? 24 A. No, I never did that. 25 Q. What did you mean, Mr. O'Shaughnessy,</p>
<p style="text-align: right;">Page 485</p> <p>1 provide truthful and accurate information to all 2 parties, including the court? 3 MR. BLOCK: Objection to form. 4 A. Yes. Yes. 5 Q. And did you do your very best to 6 fulfill that duty? 7 A. I did. 8 Q. Mr. O'Shaughnessy, I want to show you 9 what was marked as Exhibit 37 to your deposition. 10 And this Exhibit 37 to your deposition included an 11 e-mail from you dated Monday, August 13, 2001. 12 Do you see that, Mr. O'Shaughnessy? 13 A. Yes, I do. 14 Q. Okay. And you were asked some 15 questions about a couple of things that you said in 16 this e-mail and I want to give you a chance to 17 explain it. 18 What you read in this e-mail is that 19 J&J, back in the '70s, developed proof that its talc 20 was free from asbestos. I have assembled those 21 documents and have them. 22 Do you see that? 23 A. Yes, I do. 24 Q. Okay. And there were a bunch of 25 questions about whether there were folks on this</p>	<p style="text-align: right;">Page 487</p> <p>1 when you said J&J, back in the 1970s, developed 2 proof that its talc was free from asbestos? 3 MR. BLOCK: Objection to form; 4 foundation. 5 A. What I meant by that and what I hope 6 I conveyed earlier is that as the attorney for the 7 company -- 8 (Technical difficulty.) 9 (Court Reporter clarification.) 10 (The following is read back: 11 "QUESTION: What did you mean, 12 Mr. O'Shaughnessy, when you said J&J, back in the 13 1970s, developed proof that its talc was free from 14 asbestos? 15 "MR. BLOCK: Objection to form; 16 foundation. 17 "ANSWER: What I meant by that and 18 what I hope I conveyed earlier is that as the 19 attorney for the company..."") 20 BY MS. BROWN: 21 Q. Mr. O'Shaughnessy, do you mind 22 picking up there? Thank you. 23 A. What I meant by that was that as the 24 attorney for the company in litigation and working 25 with our outside lawyers, as part of that process we</p>

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<p style="text-align: right;">Page 488</p> <p>1 would be interviewing all the people at the company 2 who had any involvement with the product, we would 3 be assembling the documents that are relevant to the 4 issues in a particular case, and the lawyers would 5 have those documents and information in one place. 6 And this firm, Mehaffy & Weber, Gene 7 Williams in particular, when you have multiple cases 8 oftentimes you gather a lot of the information with 9 one firm and then you use that firm to help out 10 around the country with the lawsuits in different 11 jurisdictions. So you have one attorney, one firm 12 that is quite conversant with the product and the 13 documents. 14 So when I said that J&J, back in the 15 '70s, developed proof that its talc was free from 16 asbestos, I have assembled those documents, I was 17 referring to the documents that our attorneys had 18 assembled and collected as part of the litigation 19 process which would include, you know, the testing 20 and other scientific data related to the product, 21 including back to the '70s. 22 And I was saying to them here it was, 23 I have it in one place. If you need it, let me know 24 and we'll consider that. 25 Q. And to the best of your recollection,</p>	<p style="text-align: right;">Page 490</p> <p>1 Q. You were shown, for example, 2 Mr. O'Shaughnessy, Exhibit 26 to your deposition, 3 which is a report from Walter McCrone Associates 4 titled: "Examination of Talc Samples, Argonaut Ore 5 Body." 6 Do you recall this document? 7 A. No. I mean, I recall it from the 8 deposition earlier, yes, I'm sorry. 9 Q. And counsel pointed to a couple of 10 different passages in this document, including this 11 chart, Table 2. And do you remember questions from 12 counsel about chrysotile and whether there was 13 chrysotile findings in these samples? 14 A. Yes. 15 Q. And the part of the document, though, 16 that counsel didn't show you is here on page 4 -- 17 MR. BLOCK: Objection to form. 18 BY MS. BROWN: 19 Q. Can you read to our jurors the very 20 last sentence in this McCrone testing report? 21 A. "Chrysotile levels of this order of 22 magnitude might well arise" -- I'm going to have to 23 read it again because I'm blocked. 24 Q. I apologize. 25 A. It's me. It's my screen. I'll begin</p>
<p style="text-align: right;">Page 489</p> <p>1 Mr. O'Shaughnessy, did anybody on this e-mail take 2 you up on that and come get your documents? 3 MR. BLOCK: Objection to form. 4 A. No, I think, you know, my suggestion 5 was to present Johnson & Johnson apart from the 6 other members, and no, they continued on with what 7 they were doing to begin with. 8 Q. And in terms of your knowledge of how 9 these documents were collected and assembled, to the 10 best of your knowledge, where did all these test 11 results come from? 12 MR. BLOCK: Objection to form; 13 foundation. 14 A. They came from the company files. 15 Q. And was it your job, 16 Mr. O'Shaughnessy, to review and analyze the details 17 of those test results? 18 MR. BLOCK: Objection to form. 19 A. No, they would be collected. And 20 like I testified before, from time to time, if a 21 particular document for testing came up in a 22 litigation, I would have probably seen with the 23 attorneys. But no, I did not sit down and look at 24 all those documents collected. You're talking 25 about, you know, thousands of pages of documents.</p>	<p style="text-align: right;">Page 491</p> <p>1 again. 2 "Chrysotile levels of this order of 3 magnitude might well arise during the -- during the 4 taking and handling of the samples." 5 Q. Were you the person tasked with 6 analyzing reports like this to determine whether or 7 not the samples had been contaminated during the 8 taking and handling? 9 A. No. 10 Q. In terms of reviewing and analyzing 11 this kind of scientific information, did you ever 12 have a responsibility for doing that kind of stuff, 13 Mr. O'Shaughnessy? 14 A. No, absolutely not. 15 Q. Based on your participation in the 16 Worldwide Talc Steering Committee, were there other 17 people at the company who were qualified to review 18 and analyze and interpret results like the one we're 19 looking at here in Exhibit 26B? 20 MR. BLOCK: Objection; form; 21 foundation. 22 A. Yes, that's correct. 23 Q. And for the record, I think I 24 referred to this as Exhibit 26, but it's 26B. 25 Mr. O'Shaughnessy, you were asked</p>

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<p style="text-align: right;">Page 492</p> <p>1 some questions about Exhibit 32, Interrogatory 2 responses in a case called "Krushinski." 3 Do you recall those questions? 4 A. Yes, I do. 5 Q. And you were specifically asked 6 questions about a response to Interrogatory Number 7 17 in which the response was that, "To the best of 8 defendant's knowledge, talc used in the manufacture 9 of Johnson & Johnson's Baby Powder never contained 10 asbestos in any form, or tremolite." 11 Do you remember questions about that? 12 A. Yes. 13 Q. And then you were shown some 14 documents from the 1960s reporting what appeared to 15 be trace amounts of tremolite. 16 Do you remember that line of 17 questions? 18 MR. BLOCK: Objection to form. 19 A. Yes. I'm sorry, yes, that's right. 20 Q. Okay. First of all, did you review 21 and analyze that Battelle document to determine 22 whether or not the tremolite finding was tremolite 23 or tremolite asbestos? 24 MR. BLOCK: Objection to form. 25 A. No. No, I didn't do anything like</p>	<p style="text-align: right;">Page 494</p> <p>1 SPECIAL MASTER: Miss Brown, please, 2 Miss Brown, let Mr. Block finish and you can be 3 heard. 4 MR. BLOCK: So I think after 5 Miss Brown's done questioning, I'd like to be heard 6 about whether that was a waiver and then what the 7 scope of the waiver would be. But I say it now so 8 that Miss Brown knows that any further questions 9 about what Mr. O'Shaughnessy reviewed or did not 10 review before giving his final approval to these 11 Interrogatories that included that statement, in my 12 view, is a waiver. And I will just say that now 13 that she's gotten that one question and answer and 14 if that's it, then we could take it up at a break. 15 If it's not, then I think we should take it up now. 16 SPECIAL MASTER: Can we hear from 17 Miss Brown? 18 MS. BROWN: Judge, you're a little 19 hard to hear, I don't know if it's just on my end. 20 VIDEOGRAPHER: Yeah, no, I'm having 21 trouble picking him up as well. 22 MR. BLOCK: No, that is -- we're 23 having a hard time hearing you, judge. 24 (Court Reporter clarification.) 25 SPECIAL MASTER: I just turned up the</p>
<p style="text-align: right;">Page 493</p> <p>1 that. 2 Q. Okay. Are you aware -- 3 MR. BLOCK: Your Honor, your Honor, I 4 just want to interject that if Miss Brown is going 5 to ask the witness what he, what documents he 6 reviewed and relied upon before approving this 7 statement in this Interrogatory, then that will open 8 the door for me to ask about any documents and any 9 information he reviewed before finally approving 10 this. So I -- 11 MS. BROWN: Jerry -- 12 MR. BLOCK: -- so I just want to say 13 that's going to be our position. She's asking 14 him -- she's asking him as a lawyer -- she's asking 15 Mr. O'Shaughnessy as an attorney what he reviewed, 16 what internal documents he reviewed in order to make 17 a decision to give final approval to that statement. 18 MS. BROWN: Jerry -- 19 MR. BLOCK: And that is exactly the, 20 that -- she's asking for his mental impressions and 21 what went into his thinking in approving that 22 statement, and what -- 23 MS. BROWN: That is not -- 24 MR. BLOCK: -- and what he -- she 25 just asked him. So, your Honor, that is a --</p>	<p style="text-align: right;">Page 495</p> <p>1 volume on the computer. 2 Andrea, for my benefit, can you 3 please repeat the last question and answer and then 4 we'll hear from Miss Brown. 5 MR. BLOCK: And, your Honor, if she 6 could please read back, it might take a couple of 7 questions, 'cause there was sort of an intro about 8 the Battelle documents and then ultimately it was 9 did you review those Battelle documents before, you 10 know, these Interrogatories were certified or 11 something along those lines. So that chunk of 12 questioning and answering. 13 SPECIAL MASTER: Sure. 14 (The following Questions and Answers 15 are read back: 16 "QUESTION: And you were specifically 17 asked questions about a response to Interrogatory 18 Number 17 in which the response was that, 'To the 19 best of defendant's knowledge, talc used in the 20 manufacture of Johnson & Johnson's Baby Powder never 21 contained asbestos in any form, or tremolite.' 22 "Do you remember questions about 23 that? 24 "ANSWER: Yes. 25 "QUESTION: And then you were shown</p>

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<p style="text-align: right;">Page 496</p> <p>1 some documents from the 1960s reporting what 2 appeared to be trace amounts of tremolite. 3 "Do you remember that line of 4 questions? 5 "MR. BLOCK: Objection to form. 6 "ANSWER: Yes. I'm sorry, yes, 7 that's right. 8 "QUESTION: Okay. First of all, did 9 you review and analyze that Battelle document to 10 determine whether or not the tremolite finding was 11 tremolite or tremolite asbestos? 12 "MR. BLOCK: Objection to form. 13 "ANSWER: No. No, I didn't do 14 anything like that. 15 "QUESTION: Are you aware --") 16 SPECIAL MASTER: Okay, Miss Brown, 17 you want to be heard on that? 18 As I understood the question, it was 19 only directed to that one specific document. The 20 witness wasn't asked what he relied upon if, to 21 approve or bless, what have you, that answer to 22 Interrogatories. 23 So I just want -- that's my 24 understanding of the question. It was only directed 25 to that one specific document, so...</p>	<p style="text-align: right;">Page 498</p> <p>1 MR. BLOCK: Your Honor, it's our 2 position that if Miss Brown asked this witness for 3 mental impressions such as whether he analyzed 4 documents to determine whether the references were 5 to tremolite or tremolite asbestos, then we can also 6 ask the witness about his mental impressions about 7 testing documents. I mean, it has to go both ways, 8 your Honor. 9 MS. BROWN: I'm following up on -- 10 SPECIAL MASTER: Hold on. 11 Miss Brown, we'll get to that when 12 the opportunity arises. After you finish your 13 questioning -- 14 MR. BLOCK: Okay. 15 SPECIAL MASTER: -- Mr. Block will 16 question and if you have an objection, assert it and 17 we'll deal with it. 18 MR. BLOCK: All right. Also, could 19 we get, I mean, an estimate of time or else I think 20 I need a break. I mean, we've been going for a 21 while. Miss Brown's been going for a while. 22 MS. BROWN: I'm going to be done with 23 everything in less than ten minutes. 24 MR. BLOCK: Well, I'm going to need 25 like a minute break anyway before I go, so we either</p>
<p style="text-align: right;">Page 497</p> <p>1 MS. BROWN: Yeah, thank you. Thanks, 2 judge. 3 MR. BLOCK: Your Honor -- 4 MS. BROWN: Real quick, your Honor 5 made the point better than I would have. That's 6 exactly right. Counsel suggested that I had, in 7 some way, asked what he had reviewed before this 8 Interrogatory. 9 It was two separate questions. We 10 started here and then I said you remember you were 11 shown this other one. Did you review that document, 12 like here in the deposition, to determine 13 asbestiform/nonasbestiform. 14 I am not intending to ask what he 15 reviewed to verify these Interrogatories as that is 16 most certainly privileged. And then my question was 17 not even close to the line on that. It was a 18 document Mr. Block showed him, and I asked about 19 whether he took the time to go through that to 20 figure out whether the tremolite listing there was 21 asbestiform or nonasbestiform. 22 So I only have two more questions 23 here, they will certainly not go into an area of 24 what privileged material he reviewed to inform this 25 response and that will be the end of this document.</p>	<p style="text-align: right;">Page 499</p> <p>1 could take a five-minute break now or if you want to 2 finish your questioning then we can take five 3 minutes then. 4 MS. BROWN: Let's do this, I want to 5 finish making a very clear record about this 6 extensive objection. My question was whether the 7 document that Mr. Block put in front of this witness 8 was analyzed here in this deposition or whether or 9 not the tremolite that counsel put on the screen was 10 asbestiform or nonasbestiform. 11 Although counsel represented that I 12 linked that to these Interrogatory responses, I did 13 not, and they are two very different questions, and 14 I have no intention nor did I of asking what he 15 reviewed before verifying this response. 16 With that, I am happy to take a break 17 and I can tell everyone -- 18 SPECIAL MASTER: I appreciate your 19 clarification. Can we just confirm that your 20 understanding of what you intended to ask was what 21 the witness intended when he answered the question; 22 that he intended to answer the question only as to 23 what he saw today and not with regard to these 24 Answers to Interrogatories. I think it would be 25 helpful if the record reflected --</p>

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<p style="text-align: right;">Page 500</p> <p>1 MR. BLOCK: Yeah, your Honor, I would 2 request that be clarified when we come back, you 3 know, in Miss Brown's questioning. 4 MS. BROWN: Yeah, I'll gladly 5 rephrase that question, and your Honor is a hundred 6 percent right and I will make clear on the record. 7 My question was directed towards his contemporaneous 8 review in this deposition of that document and it 9 was entirely divorced from the document I have on 10 the screen, and I'd be glad to clarify that when we 11 come back. 12 MR. BLOCK: Yeah. And if it has 13 nothing to do with the document on the screen, then 14 Miss Brown should not have this document on the 15 screen when she's asking the question as she did 16 before. 17 MS. BROWN: That's Miss Brown's 18 decision of how she wants to question, but, in any 19 event, I'm happy to clarify when we come back. 20 SPECIAL MASTER: Time for a break. 21 MS. BROWN: Okay, thank you. 22 VIDEOGRAPHER: All right, stand by. 23 Going off the record, 3:37 p m. 24 This is the end of Media Unit 4. 25 (Recess: 3:37 p m. to 3:54 p m.,</p>	<p style="text-align: right;">Page 502</p> <p>1 marked during the deposition as Exhibit 15A, and do 2 you recognize this document, this Battelle document, 3 as the Battelle exhibit that you were shown during 4 your deposition today? 5 A. Yes. 6 Q. And if we go to page 13, do you 7 recognize this Table 8 as a chart that you were 8 shown during your deposition today? 9 A. Yes, I think so. 10 Q. And to be more precise for my 11 question, Mr. O'Shaughnessy, when you were shown 12 this document during your deposition today, did you 13 analyze the document or the testing to determine 14 whether the tremolite reference here is 15 nonasbestiform tremolite or asbestiform tremolite? 16 MR. BLOCK: Objection; form and 17 foundation. 18 A. No, I wasn't doing that. 19 Q. Mr. O'Shaughnessy, Mr. O'Shaughnessy, 20 you were asked a number of questions during the 21 course of your deposition about statements you 22 reviewed or court documents you reviewed that stated 23 that Johnson's Baby Powder is asbestos-free. 24 Do you recall those questions? 25 A. Yes.</p>
<p style="text-align: right;">Page 501</p> <p>1 Eastern Standard Time.) 2 VIDEOGRAPHER: Going back on the 3 record, 3:54 p.m. 4 And this is the beginning of Media 5 Unit 5. Okay. 6 MR. BLOCK: Can we please have the 7 last question and answer read back. 8 (The following Questions and Answers 9 are read back: 10 "QUESTION: Okay. First of all, did 11 you review and analyze that Battelle document to 12 determine whether or not the tremolite finding was 13 tremolite or tremolite asbestos? 14 "MR. BLOCK: Objection to form. 15 "ANSWER: No. No, I didn't do 16 anything like that. 17 "QUESTION: Are you aware --") 18 BY MS. BROWN: 19 Q. Mr. O'Shaughnessy, picking up where 20 we left off, when I asked you that question about 21 that Battelle document, what was your understanding 22 of what I was talking about? 23 A. I was answering with respect to what 24 happened during the deposition today. 25 Q. And I will share with you what was</p>	<p style="text-align: right;">Page 503</p> <p>1 Q. Mr. O'Shaughnessy, sitting here 2 today, several years after you've retired from 3 Johnson & Johnson, do you still stand by the 4 statements that you made and approved that Johnson's 5 Baby Powder is asbestos-free? 6 MR. BLOCK: Objection; form and 7 foundation. 8 A. Yes, I do. 9 Q. And why is that, Mr. O'Shaughnessy? 10 MR. BLOCK: Objection; form and 11 foundation. 12 A. 'Cause I believe that they are 13 accurate. 14 Q. Thanks very much, Mr. O'Shaughnessy, 15 for your time today. 16 MS. BROWN: I have no further 17 questions. 18 MR. BLOCK: I have some follow-up 19 questions. 20 REDIRECT EXAMINATION BY MR. BLOCK: 21 Q. Mr. O'Shaughnessy, could you identify 22 any specific evidence, any specific document that 23 supports the statement that you just made to this 24 jury that you believe that Johnson's Baby Powder is 25 and has always been asbestos-free?</p>

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<p style="text-align: right;">Page 504</p> <p>1 A. No, not as I sit here today, after --</p> <p>2 Q. Can you identify --</p> <p>3 MS. BROWN: Jerry, he was still</p> <p>4 talking, I'm just going to ask that you let him</p> <p>5 finish his answer before you ask your next question.</p> <p>6 A. No --</p> <p>7 Q. Your answer --</p> <p>8 A. No, so many years after the fact.</p> <p>9 Q. Can you identify any specific</p> <p>10 scientist that ever worked at Johnson & Johnson that</p> <p>11 you're relying upon for the statement you just gave</p> <p>12 to this jury that there has never been asbestos in</p> <p>13 Johnson's Baby Powder, even as we sit here today in</p> <p>14 2021?</p> <p>15 MS. BROWN: Objection; misstates the</p> <p>16 question, lacks foundation.</p> <p>17 A. It would be the totality of the</p> <p>18 people I discussed that issue with over the years at</p> <p>19 Johnson & Johnson.</p> <p>20 Q. Can you name one, any scientist by</p> <p>21 name who you're relying upon for the statement that</p> <p>22 you just gave to this jury that as of today, in</p> <p>23 2021, there has never been asbestos in Johnson's</p> <p>24 Baby Powder?</p> <p>25 MS. BROWN: That absolutely misstates</p>	<p style="text-align: right;">Page 506</p> <p>1 MS. BROWN: Same objection. He just</p> <p>2 answered that.</p> <p>3 A. The scientists I dealt with,</p> <p>4 Chudkowski, Ashton, Hodgkins (sic), and others, I</p> <p>5 don't recall their names.</p> <p>6 Q. Okay. You said Michael Chudkowski?</p> <p>7 A. Yeah.</p> <p>8 Q. Did Michael Chudkowski tell you that</p> <p>9 there was never asbestos in Johnson's Baby Powder?</p> <p>10 A. I don't recall specific discussions</p> <p>11 with any of them, but that subject came up and the</p> <p>12 statement that it does not contain asbestos or the</p> <p>13 fact it does not contain asbestos, yes, was</p> <p>14 discussed with all of them.</p> <p>15 Q. Okay. And to the best of your</p> <p>16 recollection, Mike Chudkowski, William Ashton and</p> <p>17 Dr. John Hopkins all told you that there was never</p> <p>18 asbestos in Johnson's Baby Powder, correct?</p> <p>19 A. Those conversations I don't recall</p> <p>20 the specifics of, but yes, that was the gist of the</p> <p>21 information I received from the company.</p> <p>22 Q. And did Michael Chudkowski, William</p> <p>23 Ashton or Dr. John Hopkins show you the documents</p> <p>24 that Johnson & Johnson had discussing asbestos in</p> <p>25 talc?</p>
<p style="text-align: right;">Page 505</p> <p>1 his testimony and the question, I object.</p> <p>2 MR. BLOCK: Excuse me, excuse me,</p> <p>3 let's have the question read back so it could be</p> <p>4 answered.</p> <p>5 (The following Question is read back:</p> <p>6 "QUESTION: Can you name one, any</p> <p>7 scientist by name who you're relying upon for the</p> <p>8 statement that you just gave to this jury that as of</p> <p>9 today, in 2021, there has never been asbestos in</p> <p>10 Johnson's Baby Powder?")</p> <p>11 MS. BROWN: I have the same objection</p> <p>12 that that misstates his testimony and the question.</p> <p>13 MR. BLOCK: Please answer the</p> <p>14 question, sir.</p> <p>15 A. Again, it would be, it would be all</p> <p>16 of the scientists and people I spoke with at Johnson</p> <p>17 & Johnson and in my work as a whole on the</p> <p>18 litigation.</p> <p>19 Q. Can you name any scientist who you're</p> <p>20 relying upon, anyone by name?</p> <p>21 MS. BROWN: It's been asked and</p> <p>22 answered many times. I object.</p> <p>23 A. It would be all of them.</p> <p>24 Q. Can you name any scientist by name?</p> <p>25 You're saying all of them. Name one.</p>	<p style="text-align: right;">Page 507</p> <p>1 MS. BROWN: Objection; vague.</p> <p>2 A. I don't recall all of the</p> <p>3 circumstances of the many meetings, you know, that I</p> <p>4 had along with outside counsel with the scientists</p> <p>5 at Johnson & Johnson. I don't recall specifically</p> <p>6 what documents we may or may not have been talking</p> <p>7 about or that I may have saw during any of those</p> <p>8 meetings.</p> <p>9 Q. You said as you sit here today, you</p> <p>10 still believe that there was never asbestos in</p> <p>11 Johnson's Baby Powder, right?</p> <p>12 That's what you just testified to in</p> <p>13 response to Miss Brown's testimony, right?</p> <p>14 MS. BROWN: Objection.</p> <p>15 A. Yeah.</p> <p>16 Q. And can you identify any documents</p> <p>17 you reviewed that supports the statement you just</p> <p>18 made to the jury?</p> <p>19 MS. BROWN: Object; asked and</p> <p>20 answered.</p> <p>21 A. I can't identify any specific</p> <p>22 documents, but I have seen documents at the company</p> <p>23 that do support that statement.</p> <p>24 Q. Can you identify any testing done at</p> <p>25 any time that you reviewed that support the</p>

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<p style="text-align: right;">Page 508</p> <p>1 statement that you just made to the jury that you 2 believe that there's never been asbestos in 3 Johnson's Baby Powder, even as of today? 4 MS. BROWN: Misstates his testimony 5 and I object as asked and answered multiple times. 6 A. I'll try it again. I think I, what I 7 was conveying is that, you know, based on my 8 experience at the company while I was there, that 9 was certainly the view of the company and in 10 preparing cases for litigation, you know, we would 11 review materials with the company. I can't 12 specifically identify them right now, I can't, if 13 that answers your question, but there were some. 14 Q. Mr. O'Shaughnessy, in response to 15 questioning from J&J's lawyer, you acknowledge that 16 you're not a scientist, right? 17 A. That's right. 18 Q. And you're a lawyer and you litigated 19 cases for Johnson & Johnson, right? 20 A. That's correct. 21 Q. Would you be someone at Johnson & 22 Johnson that would recommend what scientists Johnson 23 & Johnson should use when they were opposing the 24 NTP's listing of talc as a carcinogen; would you 25 recommend scientists?</p>	<p style="text-align: right;">Page 510</p> <p>1 about two or three months after you were e-mailing 2 with Miss Colamarino and Dr. Mann and Mr. Monseau 3 about the Forensic Analytical testing that reported 4 finding asbestos in Johnson's Baby Powder, right? 5 A. Yes. 6 Q. All right. And the subject of the 7 e-mail to you on June 2nd, 2004, is talc conference 8 call minutes, right? 9 A. Yes. 10 Q. And Dr. Mann mentions a Dr. Judith 11 Jones. 12 Do you see that? 13 A. Yes. 14 Q. And he characterized Dr. Judith Jones 15 as a strong supporter. 16 Do you see that? 17 A. Yes. 18 Q. All right. And then you replied to 19 that e-mail, didn't you? 20 A. Yes, I did. 21 Q. And your e-mail from June 3rd, 2004, 22 says, "Steven: Dr. Judith Jones was not on the NTP 23 committee. Rather, she was a presenter. We asked 24 her to become involved. She is an epidemiologist 25 and I'm sure would work with us again. She's right</p>
<p style="text-align: right;">Page 509</p> <p>1 A. No. 2 Q. You would never do that? 3 A. No, I don't recall ever doing that. 4 Q. All right. Let's take a look at 5 Exhibit 45 to your deposition. And if you look at 6 binder number 2, Exhibit 45 is a e-mail chain. And 7 if we start on page 2, if you just flip into the 8 second page, do you see that there's an e-mail from 9 Steven Mann? 10 A. Yes. 11 Q. And do you see that Steven Mann is 12 sending an e-mail to Sarah Colamarino and Marc 13 Monseau and also to you and other people. 14 Do you see that? 15 A. Yes. 16 Q. All right. And this is June 2nd, 17 2004, right? 18 A. June 2nd, 2004, yes. 19 VIDEOGRAPHER: I'm sorry, I'm losing 20 the witness' image off of the screen. Okay. 21 BY MR. BLOCK: 22 Q. All right. The e-mail from Steven 23 Mann is June 2nd, 2004, correct? 24 A. Yes. 25 Q. And June 2nd, 2004, is about, it's</p>	<p style="text-align: right;">Page 511</p> <p>1 in DC. John." 2 That was from you, right? 3 A. Yes. 4 Q. And then you could see, and you wrote 5 that to Dr. Steven Mann, a toxicologist at Johnson & 6 Johnson, right? 7 A. I did. 8 Q. And then Steven Mann writes above 9 your e-mail to Linda Loretz of the CTFA -- I'm 10 sorry, Steven Mann writes to Linda. 11 You see that? It appears to be Linda 12 Loretz from the CTFA. 13 A. Yes. 14 Q. And Dr. Mann writes, "Linda, I 15 believe you were copied on John O'Shaughnessy's 16 comment about Judith Jones not being on the NTP 17 panel but a presenter for us." 18 Do you see that? 19 A. Yes. 20 Q. Okay. And Dr. Mann, at the top 21 e-mail, says, "Linda, do you have contact 22 information for Judith Jones? John O'Shaughnessy 23 thinks we should use her again." 24 Do you see that? 25 A. I do.</p>

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<p style="text-align: right;">Page 512</p> <p>1 Q. Okay. So you did recommend a 2 scientist, Judith Jones, for Johnson & Johnson to 3 use in regard to the NTP review on talc. You did do 4 that, didn't you, sir? 5 A. Yeah, what I said was apparently, 6 apparently Judith Jones worked with the company 7 before and I was aware of that, so I corrected Mr. 8 Man's statement, and I was suggesting that they may 9 want to work with her again because she's right in 10 DC. 11 Q. So when Dr. Mann said, "John 12 O'Shaughnessy thinks we should use her again," did 13 he misunderstand you? 14 A. No, I don't think so. 15 Q. Okay. 16 A. Work with her again. 17 Q. You were asked about Exhibit 7, which 18 was the summary of the proceedings at the workshop 19 that was jointly sponsored by the International 20 Society of Regulatory Toxicology and Pharmacology 21 and the FDA. 22 Do you remember that? 23 A. I do. 24 Q. And that's the one where you were 25 identified in the proceedings as John O'Shaughnessy</p>	<p style="text-align: right;">Page 514</p> <p>1 Q. Do you see that? 2 A. Yes. 3 Q. And Johnson & Johnson, when you 4 worked for the company, always told the FDA that 5 there was no asbestos in cosmetic talc, correct? 6 MS. BROWN: Objection; foundation. 7 A. I wouldn't be privy to everything 8 they told them, but I believe that's correct, that 9 was certainly their position. 10 Q. Okay. Now, you were asked about 11 Exhibit 37. You were asked about Exhibit 37 and 12 about your statement that I have assembled those 13 documents and I have them. 14 Do you remember that? 15 A. I do. 16 Q. I put the statement up on the screen, 17 your statement on August 13, 2001, "I have assembled 18 those documents and have them." 19 Do you see that? 20 A. I do. 21 Q. Okay. And then I want to just make 22 sure what you were explaining to the jury. 23 Were you saying to the jury that the 24 documents were actually assembled by lawyers, 25 including primarily the law firm of Mehaffy & Weber</p>
<p style="text-align: right;">Page 513</p> <p>1 from Princeton, no mention of Johnson & Johnson, 2 right? 3 A. That's right. 4 Q. Okay. And Miss Brown asked you to 5 read certain portions of these proceedings. 6 Do you remember that? 7 A. I do. 8 Q. And it's true that at those 9 proceedings, Dr. Gettings, on behalf of the CTFA, 10 including Johnson & Johnson, told the FDA officials 11 that there was no asbestos fibers in cosmetic talc, 12 correct? 13 MS. BROWN: Objection; misstates the 14 document. 15 A. Can you just move it to the left a 16 little bit, please? 17 Q. Sure. 18 A. I'm sorry. I'm going to -- 19 Q. Here it is. Do you see it right big 20 on the screen, that in summarizing Dr. Gettings' 21 comments to the FDA officials and the other 22 participants, it says, "Today stringent safety and 23 quality control measures ensure the absence of 24 asbestos fibers"? 25 A. Yes.</p>	<p style="text-align: right;">Page 515</p> <p>1 and Gene Williams who was an attorney there? 2 MS. BROWN: I am going to object and 3 hold on a second here. 4 Mr. O'Shaughnessy, I'm going to 5 instruct you not to reveal any specific interaction 6 you had with particular outside counsel and the work 7 that particular outside counsel would have done in a 8 particular litigation. You can talk generally, of 9 course, as it relates to this document, but I 10 caution you on the specifics. 11 MR. BLOCK: Your Honor, your Honor, 12 I'd like to request a sidebar so we can get a read 13 back of Mr. O'Shaughnessy's testimony. 14 He already testified that the 15 documents were gathered by the lawyers and I believe 16 he already testified that the main law firm who 17 gathered and assembled the documents was Gene 18 Williams and Mehaffy & Weber, and that the outside 19 law firms would gather the documents and put them 20 together, and I was following up on that. 21 But I think since we're going to have 22 these objections, we can go to sidebar and we can 23 get a read back of that testimony, then hopefully we 24 can have some guidance from you about the parameters 25 of my questioning in response to that.</p>

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<p style="text-align: right;">Page 516</p> <p>1 SPECIAL MASTER: Let's go sidebar. 2 MR. BLOCK: Thank you. 3 (Sidebar.) 4 SPECIAL MASTER: I think a good place 5 to start, sorry to bother you, Andrea, if you can 6 just repeat the question that was last asked and 7 we'll go from there. 8 (The following Question is read back: 9 "QUESTION: Okay. And then I want to 10 just make sure what you were explaining to the jury. 11 Were you saying to the jury that the 12 documents were actually assembled by lawyers, 13 including primarily the law firm of Mehaffy & Weber 14 and Gene Williams who was an attorney there?") 15 SPECIAL MASTER: J&J, the argument 16 plaintiffs made is that this door was already 17 opened; what say you? 18 MS. BROWN: Thanks, judge. Couple of 19 things. Certainly I understand what 20 Mr. O'Shaughnessy's testimony was and my instruction 21 was simply not to go beyond that. 22 He did testify that the documents 23 were put together in litigation and primarily by 24 Gene Williams and Mehaffy & Weber. I was just 25 cautioning him not to reveal specific work that</p>	<p style="text-align: right;">Page 518</p> <p>1 think of anything that we should talk about now that 2 is hypothetical. We may not have any issues, we may 3 have issues, I don't know, but just -- 4 SPECIAL MASTER: Let's go back on the 5 record. I'd rather deal with a concrete question 6 and answer. 7 MR. BLOCK: Right. Thank you very 8 much. 9 MS. BROWN: Thank you. 10 (Sidebar ends.) 11 VIDEOGRAPHER: Back on the record, 12 4:18 p m. Okay. 13 We're on. You may proceed. 14 MR. BLOCK: Okay. Could we have the 15 last question read back, please. 16 (The following Question is read back: 17 "QUESTION: Okay. And then I want to 18 just make sure what you were explaining to the jury. 19 Were you saying to the jury that the 20 documents were actually assembled by lawyers, 21 including primarily the law firm of Mehaffy & Weber 22 and Gene Williams who was an attorney there?") 23 MR. BLOCK: Please answer the 24 question. 25 A. Yes, as part of the litigation in the</p>
<p style="text-align: right;">Page 517</p> <p>1 would have been done in a specific case. 2 But if the extent of this inquiry is 3 Gene Williams and Mehaffy & Weber, I agree he has 4 already testified to that, and I agree that's, you 5 know, consistent with the produced document and I 6 don't have an objection to that. 7 SPECIAL MASTER: Mr. Block, why don't 8 we have the witness answer this question. 9 Essentially, you're just asking him to confirm his 10 earlier testimony and if there's an objection to the 11 follow-up question or questions, we'll deal with it. 12 MR. BLOCK: I agree. We can go back, 13 have the question read back, have the witness answer 14 and then we'll just go forward and see where it 15 goes. 16 MS. BROWN: Well, I mean, if you're 17 intending to go further in terms of specific cases, 18 why not just deal with that now that we're at 19 sidebar? 20 MR. BLOCK: I am not -- I don't know 21 what I'm intending to ask next, okay. I'm not going 22 to -- 23 MS. BROWN: I'm going to object to 24 that, so if you want to -- 25 MR. BLOCK: That's fine. I can't</p>	<p style="text-align: right;">Page 519</p> <p>1 document collection process it would have been 2 collected and I believe Gene Williams' firm would 3 have been part of that. 4 Q. And Gene Williams' firm was Mehaffy & 5 Weber, correct? 6 A. Yes. 7 Q. And that is the same Mehaffy & Weber 8 law firm that wrote you on March 16, 1998, to tell 9 you that Dr. Blount had tested Johnson's Baby Powder 10 and determined that it contained asbestos, correct? 11 MS. BROWN: Objection; misstates the 12 document. 13 A. That's -- the document we discussed 14 from Dr. Blount, yes. 15 Q. It's the same Mehaffy & Weber that 16 sent you the document, the letter in March of 1998, 17 that reported on their conversations with 18 Dr. Blount, correct? 19 A. That's right. 20 Q. And reported to you that Dr. Blount's 21 opinion was that Johnson & Johnson Baby Powder 22 contained trace amounts of asbestos, correct? 23 A. Yeah, I think that's her reported 24 findings, yes. 25 Q. All right. And Gene Williams from</p>

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<p style="text-align: right;">Page 520</p> <p>1 Mehaffy & Weber, that's the same Mehaffy & Weber law 2 firm that Dr. Blount herself wrote to on April 23rd, 3 1998, correct? 4 A. That's the same firm. 5 Q. And GMW on the top right of 6 Dr. Blount's letter to Mehaffy & Weber are the 7 initials of Gene Williams, the head lawyer at 8 Mehaffy & Weber and the person in charge of 9 assembling all of the documents for Johnson & 10 Johnson relating to talc, correct? 11 MS. BROWN: Objection; misstates 12 testimony. 13 A. I'm not -- I'm not looking at the 14 GW -- the initials right now, and I don't 15 know -- can you just tell me the document number 16 quickly? 17 Q. Sure. If you look at Exhibit 12, 18 we're looking at Dr. Blount's letter to the law firm 19 of Mehaffy & Weber. 20 A. I see what you're referring to now. 21 It could be his initials, I'm not sure. 22 Q. Okay. Well, his first name is Gene, 23 G, and his last name is Williams, right? 24 A. Right. 25 Q. You just don't know if his middle</p>	<p style="text-align: right;">Page 522</p> <p>1 cases, but yes. 2 Q. And in Exhibit 37, in your e-mail 3 when you said, "I have assembled those documents," 4 you were referring to the documents that were 5 assembled by law firms, and the law firm that you 6 identified as the primary law firm was Mehaffy & 7 Weber, right? 8 A. Yes. 9 Q. And when you said that you have them, 10 right, that was part of your e-mail, that I have 11 them, you're talking about yourself, John 12 O'Shaughnessy, right? 13 A. I am talking about that I, as the 14 person in the law department responsible for 15 litigation, had those. I didn't have them in my 16 office. They were available, you know, through our 17 lawyers and I could make them available to those 18 people if they wanted them. 19 Q. Okay. So when you say, "assembled," 20 that word means to bring, the documents have been 21 brought together and put somewhere, right? 22 A. Yeah. 23 Q. Where were they at this time in 2001? 24 A. I don't recall. Either at the law 25 firm or somewhere else where they store documents.</p>
<p style="text-align: right;">Page 521</p> <p>1 initial is M? 2 A. I don't. 3 Q. Okay. But again, Dr. Blount, on 4 April 23rd, 1998, sent this letter to Mehaffy & 5 Weber and she enclosed a report about asbestos in 6 talc and she enclosed two articles, one from 1990 7 and one from 1991 in this article to Mehaffy & 8 Weber, right? 9 A. Yes, that's in the document, yes. 10 Q. And in her own letter that she signed 11 to Mehaffy & Weber, she said, "As I told you, I 12 believe that Johnson & Johnson's Vermont talc 13 contains trace amounts of asbestos." 14 That's what her letter says, right? 15 A. As I told you, I believe -- yes. 16 Q. And she's saying this in the letter 17 to the Mehaffy & Weber law firm, which was the law 18 firm that collected all the documents regarding talc 19 for Johnson & Johnson, right? 20 MS. BROWN: No, I object. That 21 misstates his testimony and Exhibit 37. 22 A. It was the same Mehaffy & Weber that 23 Gene Williams had and they were involved in document 24 collection. They probably weren't the only firm 25 because, you know, these things, there were many</p>	<p style="text-align: right;">Page 523</p> <p>1 Q. And when you say, "at the law firm," 2 do you mean Mehaffy & Weber? 3 A. Primarily, yeah. 4 Q. And because Mehaffy & Weber was the 5 law firm that was the lead law firm outside Johnson 6 & Johnson handling Johnson's Baby Powder litigation? 7 A. Yes. 8 Q. Mr. O'Shaughnessy, you were asked 9 whether you enjoyed working at Johnson & Johnson. 10 Do you remember that? 11 A. I did, yeah. 12 Q. And working at Johnson & Johnson also 13 had financial benefits to you, correct, sir? 14 A. I was paid. 15 Q. Okay. Do you own shares of Johnson & 16 Johnson stock? 17 A. Right now I do, yes. 18 Q. Okay. How many shares of Johnson & 19 Johnson stock do you currently own? 20 A. I think about 3,000. 21 Q. And is that the largest number of 22 Johnson & Johnson shares of stock that you have 23 owned or have you owned more and then sold some over 24 time? 25 A. Yes, the latter.</p>

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<p style="text-align: right;">Page 524</p> <p>1 Q. And what was the most amount of</p> <p>2 Johnson & Johnson shares of stock that you owned</p> <p>3 before you sold some of it?</p> <p>4 A. I don't recall. I don't recall over</p> <p>5 time.</p> <p>6 Q. Was it over 5,000 shares of Johnson &</p> <p>7 Johnson stock?</p> <p>8 A. Could have been, yes.</p> <p>9 Q. Over 10,000 shares of Johnson &</p> <p>10 Johnson stock?</p> <p>11 A. I'm not sure if I accumulated any of</p> <p>12 those all at once, yeah.</p> <p>13 Q. Okay. Sir, do you have a pension</p> <p>14 that you get paid through Johnson & Johnson?</p> <p>15 A. I do.</p> <p>16 Q. Okay. And are those monthly payments</p> <p>17 or weekly payments?</p> <p>18 A. They come in monthly.</p> <p>19 Q. Okay. And do you have a 401(k)</p> <p>20 through Johnson & Johnson or is that separate or</p> <p>21 distinct from the pension?</p> <p>22 A. It's separate and the 401(k) is, it's</p> <p>23 over. I still maintain what I have there at Johnson</p> <p>24 & Johnson, but it's --</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 526</p> <p>1 RE-CROSS-EXAMINATION BY MS. BROWN:</p> <p>2 Q. I asked you if you stood by the</p> <p>3 statements that you made and approved during the</p> <p>4 time you worked at Johnson & Johnson that there was</p> <p>5 no asbestos in baby powder.</p> <p>6 Do you remember that?</p> <p>7 A. I do.</p> <p>8 Q. And it's true that you do, right,</p> <p>9 sir?</p> <p>10 A. I do.</p> <p>11 Q. And counsel asked you to name all of</p> <p>12 the people that you relied on over the 31 years that</p> <p>13 you worked there to support those statements.</p> <p>14 Do you remember that?</p> <p>15 MR. BLOCK: Objection to form.</p> <p>16 A. I do.</p> <p>17 Q. Can you remember, sitting here today,</p> <p>18 every scientist, inside the company or outside the</p> <p>19 company, that you worked with and spoke to on issues</p> <p>20 relating to talc?</p> <p>21 A. No.</p> <p>22 Q. You mentioned a couple of folks, Mr.</p> <p>23 Ashton being one of them. Is that right?</p> <p>24 A. Yes.</p> <p>25 Q. And what do you remember about Mr.</p>
<p style="text-align: right;">Page 525</p> <p>1 A. My understanding is it's over.</p> <p>2 Q. Okay. And do you have any other</p> <p>3 financial benefits that you currently receive from</p> <p>4 Johnson & Johnson?</p> <p>5 A. No.</p> <p>6 Q. Do you still have -- you were asked</p> <p>7 about your family.</p> <p>8 A. Yes.</p> <p>9 Q. And you're a father. And --</p> <p>10 A. I'm not a father --</p> <p>11 Q. I said, sir, you're a father,</p> <p>12 correct?</p> <p>13 A. Oh, yes, yes.</p> <p>14 Q. Okay. Do you have any children that</p> <p>15 work at Johnson & Johnson?</p> <p>16 A. Yes, my son John does.</p> <p>17 Q. Okay. So you have a son that works</p> <p>18 at Johnson & Johnson. Do you have any close friends</p> <p>19 that still work at Johnson & Johnson?</p> <p>20 A. Yeah, I have friends who work at</p> <p>21 Johnson & Johnson. I consider them my friends. You</p> <p>22 know, I don't have that much contact with them.</p> <p>23 Q. Thank you, Mr. O'Shaughnessy.</p> <p>24 MS. BROWN: Just a couple of quick</p> <p>25 follow-ups, Mr. O'Shaughnessy.</p>	<p style="text-align: right;">Page 527</p> <p>1 Ashton, Mr. O'Shaughnessy?</p> <p>2 A. I remember he was a senior person and</p> <p>3 I recollect that he had a lot of knowledge with</p> <p>4 respect to talc ore and talc deposits and that sort</p> <p>5 of thing and had been working in, with respect to</p> <p>6 talc, I think, most of his professional life.</p> <p>7 Q. And you mentioned Dr. Hopkins was</p> <p>8 another scientist that you relied on and spoke with</p> <p>9 and dealt with on issues of talc safety. Is that</p> <p>10 right?</p> <p>11 A. Right.</p> <p>12 Q. And what do you remember about</p> <p>13 Dr. Hopkins?</p> <p>14 A. I remember Dr. Hopkins, you know, I</p> <p>15 remember my first contact with him, I think it was</p> <p>16 when he came over, it might have been in the UK, but</p> <p>17 he came over here. I remember that he was a</p> <p>18 toxicologist and he had been working on talc for a</p> <p>19 while with Johnson & Johnson as well.</p> <p>20 Q. And what about Michael Chudkowski,</p> <p>21 what do you remember about him?</p> <p>22 A. Michael Chudkowski was a toxicologist</p> <p>23 who worked at J&J as well. He was, I think he was</p> <p>24 kind of on the age or close to the age level of John</p> <p>25 Ashton when he was there, when I met him, I'm sorry</p>

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<p style="text-align: right;">Page 528</p> <p>1 Q. And did you rely on scientists like 2 Mr. Chudkowski, Mr. Ashton, Dr. Hopkins, and others, 3 to provide you information about talc? 4 A. Yes. 5 Q. And sitting here today, all these 6 years later, are you able to give our jurors a 7 complete list of everybody's name who you relied on 8 for various pieces of information about talc? 9 A. No. 10 Q. You were asked some questions again 11 about Exhibit 37 that I just want to go back to 12 briefly, if we could. 13 This was a document where you said 14 that Johnson & Johnson, back in the 1970s, developed 15 proof that its talc was free of asbestos. 16 Do you remember that? 17 A. Yes. 18 Q. And you told us about some documents 19 that you had been -- you had assembled, that you 20 offered to the folks on this e-mail, right? 21 A. Yes. 22 Q. And is it true, Mr. O'Shaughnessy, 23 that the scientists on this e-mail didn't take you 24 up on your offer for those documents? 25 MR. BLOCK: Objection to form.</p>	<p style="text-align: right;">Page 530</p> <p>1 A. No. 2 MR. BLOCK: Foundation. 3 A. No, that's -- 4 Q. Were you offering to the scientists 5 some documents you had packaged up because the 6 scientists didn't know about them? 7 MR. BLOCK: Objection to form; 8 foundation. 9 A. I was just telling them that we had 10 these documents from the company in one place if 11 they needed them. 12 Q. From time to time, Mr. O'Shaughnessy, 13 dating back to the 1970s, did you learn that the 14 company became aware of reports of asbestos in talc? 15 MR. BLOCK: Objection to form; 16 foundation. 17 A. I recall reports like that from time 18 to time and I think some of them were from the early 19 part of the '70s or from the '70s. 20 MR. BLOCK: Objection. Move to 21 strike the portion that was not responsive. 22 BY MS. BROWN: 23 Q. And based on your work, for example, 24 with the Worldwide Steering Committee, what was your 25 understanding about what the company did in</p>
<p style="text-align: right;">Page 529</p> <p>1 A. I believe I testified before, yeah, 2 there was never a request then because they didn't 3 take me up on my suggestion. 4 Q. And in terms of your work on the Talc 5 Advisory Committee and the Talc Steering Committee, 6 did you become aware of whether or not folks on that 7 committee had access to their own scientific 8 information about talc? 9 MR. BLOCK: Objection to form; 10 foundation. 11 A. Well, I knew that already because the 12 documents we had assembled were documents from the 13 company that we got from the company from those 14 people included. 15 Q. So in terms of the documents that the 16 lawyers packaged together for your job, where did 17 they get them? 18 MR. BLOCK: Objection to form; 19 foundation. 20 A. From the company. 21 Q. And, I mean, would it be fair to 22 suggest, Mr. O'Shaughnessy, that the scientists at 23 the company were relying on lawyers for scientific 24 information? 25 MR. BLOCK: Objection to form.</p>	<p style="text-align: right;">Page 531</p> <p>1 response? 2 MR. BLOCK: Objection to form; 3 foundation. 4 A. I don't recall the specifics, but the 5 company would have examined that situation and tried 6 to understand, you know, why there was a finding and 7 that sort of thing. 8 MR. BLOCK: Move to strike the 9 portion that was not responsive. 10 BY MS. BROWN: 11 Q. When you wrote J&J, back in the '70s, 12 developed proof that its talc was free from 13 asbestos, did you believe that to be true? 14 MR. BLOCK: Objection; form. 15 A. Yes. 16 Q. And did you rely on scientists like 17 Dr. Hopkins, Mr. Ashton, Mike Chudkowski and others 18 to provide information to support your statements 19 like this? 20 MR. BLOCK: Objection to form; 21 foundation. 22 A. It was part of the background for my 23 making the statement, yes. 24 Q. And based on all of your 31 years 25 working at Johnson & Johnson, did the lawyers direct</p>

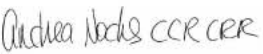
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<p style="text-align: right;">Page 532</p> <p>1 science at Johnson & Johnson?</p> <p>2 MR. BLOCK: Objection to form;</p> <p>3 foundation.</p> <p>4 A. No.</p> <p>5 MS. BROWN: That's all I have.</p> <p>6 Thanks, Mr. O'Shaughnessy.</p> <p>7 FURTHER REDIRECT EXAMINATION BY MR. BLOCK:</p> <p>8 Q. Mr. O'Shaughnessy -- can you just</p> <p>9 take down the share screen?</p> <p>10 MS. BROWN: Sure, sorry.</p> <p>11 BY MR. BLOCK:</p> <p>12 Q. Mr. O'Shaughnessy, in response to</p> <p>13 Johnson & Johnson's lawyer's questioning, you just</p> <p>14 said that Bill Ashton was one of the scientists at</p> <p>15 Johnson & Johnson that you relied upon for</p> <p>16 information about talc. Is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And you said that you relied upon him</p> <p>19 to give you information about talc, including</p> <p>20 information about talc and asbestos, right?</p> <p>21 A. Yes, I believe that would be</p> <p>22 included.</p> <p>23 Q. And you knew Bill Ashton personally,</p> <p>24 right?</p> <p>25 A. I knew him professionally at the</p>	<p style="text-align: right;">Page 534</p> <p>1 sure who he was.</p> <p>2 Q. Okay. And Mr. Ashton writes the</p> <p>3 following, he says, "The attached letter shows the</p> <p>4 particle size shape consists of a production batch</p> <p>5 of our product produced in December, 1970."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it says, "It is an aliquot of</p> <p>9 that which I gave to Dr. A. Langer at Mount Sinai</p> <p>10 Hospital."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So he's talking about a</p> <p>14 production batch of our product, and it lists baby</p> <p>15 powder at the top, right?</p> <p>16 MS. BROWN: I object to this document</p> <p>17 as lacking foundation.</p> <p>18 A. It's what it says, yes.</p> <p>19 Q. Okay. And then Mr. Ashton writes,</p> <p>20 "We consider the free non-talc needles but a trace,</p> <p>21 both on a count and area basis."</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. And he says, "Those particles are</p> <p>25 tremolite."</p>
<p style="text-align: right;">Page 533</p> <p>1 company, but I --</p> <p>2 Q. Right.</p> <p>3 A. -- I did meet him personally, yeah,</p> <p>4 in person.</p> <p>5 Q. Let me show you what is Exhibit 26A</p> <p>6 to your deposition.</p> <p>7 A. I see it.</p> <p>8 Q. And Exhibit 26A is a document dated</p> <p>9 May 14, 1971, and it is entitled: "Assay of Talc in</p> <p>10 Baby Powder."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. An assay is a scientific work for</p> <p>14 analysis or test, right?</p> <p>15 MS. BROWN: Foundation.</p> <p>16 A. I don't -- I'm not sure, but I accept</p> <p>17 what you're saying.</p> <p>18 Q. Okay. Well, let's see who it's</p> <p>19 authored by. This 1971 document, Exhibit 26A, is</p> <p>20 that person Bill Ashton, William Ashton, right?</p> <p>21 A. Yes.</p> <p>22 Q. And let's see what Mr. Ashton -- do</p> <p>23 you know that he's writing this memo to</p> <p>24 Dr. Hildick-Smith. Do you know who that was?</p> <p>25 A. I recognize the name, but I'm not</p>	<p style="text-align: right;">Page 535</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And the attachment to the letter,</p> <p>4 let's look at the attachment to the letter.</p> <p>5 Do you see it's a letter from May 10,</p> <p>6 1971, to Mr. Ashton on letterhead from the Colorado</p> <p>7 School of Mines?</p> <p>8 Do you see that?</p> <p>9 A. Yes, yes.</p> <p>10 Q. All right. And it is a analysis of</p> <p>11 baby powder.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And it lists free</p> <p>15 non-talc needles.</p> <p>16 Do you see that?</p> <p>17 A. Right.</p> <p>18 Q. And it says, "0.6 percent."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. All right. And so Mr. Ashton says</p> <p>22 that the free non-talc needles are tremolite.</p> <p>23 Do you see that?</p> <p>24 A. I see what --</p> <p>25 MS. BROWN: Objection; lacks</p>

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<p style="text-align: right;">Page 536</p> <p>1 foundation.</p> <p>2 BY MR. BLOCK:</p> <p>3 Q. Do you see that Mr. Ashton says he</p> <p>4 considers the free non-talc needles to be tremolite?</p> <p>5 MS. BROWN: Same objection.</p> <p>6 A. I can see what -- it says, "We</p> <p>7 consider the free non-talc needles but a trace," I'm</p> <p>8 not sure about what that means, "but a trace, both</p> <p>9 on a count and area basis. Those particles are</p> <p>10 tremolite."</p> <p>11 Q. Did Mr. Ashton, who you relied upon,</p> <p>12 ever tell you that the Colorado School of Mines had</p> <p>13 found tremolite needles in Johnson's Baby Powder?</p> <p>14 MS. BROWN: Objection; foundation and</p> <p>15 misstates the document.</p> <p>16 A. I don't recall any specific</p> <p>17 conversation with Mr. Ashton.</p> <p>18 Q. Then Mr. Ashton says, "In addition to</p> <p>19 the attached, I ran an X-ray diffractograph on that</p> <p>20 batch." And he said it shows these minerals are</p> <p>21 present, and he lists tremolite-actinolite as one of</p> <p>22 the minerals present on that batch of Johnson's Baby</p> <p>23 Powder.</p> <p>24 Do you see that?</p> <p>25 MS. BROWN: Foundation.</p>	<p style="text-align: right;">Page 538</p> <p>1 MS. BROWN: I object,</p> <p>2 Mr. O'Shaughnessy, and I instruct you not to answer</p> <p>3 the information that you relied on as a lawyer in</p> <p>4 responding to Interrogatories in a particular case.</p> <p>5 MR. BLOCK: Your Honor, this has been</p> <p>6 waived. The witness was just asked whether he</p> <p>7 believes all the statements that he made, including</p> <p>8 in the Interrogatories, were true. He says he</p> <p>9 believed they were true. He still believes they</p> <p>10 were true. He said he relied upon these people.</p> <p>11 And this is a fair question to ask in response to</p> <p>12 that and he should be able to answer this question.</p> <p>13 MS. BROWN: And, your Honor, I was</p> <p>14 very careful to ask those questions in terms of his</p> <p>15 general knowledge. I asked did you identify these</p> <p>16 people that you spoke to about talc safety, we</p> <p>17 talked about information he received through his</p> <p>18 participation in the Worldwide Talc Steering</p> <p>19 Committee.</p> <p>20 He absolutely did not identify nor</p> <p>21 was he ever asked to identify particular information</p> <p>22 he had or relied on in a particular case. That is</p> <p>23 100 percent work product, your Honor, I didn't ask</p> <p>24 any question that comes close to that.</p> <p>25 He made a statement in an e-mail</p>
<p style="text-align: right;">Page 537</p> <p>1 A. I do.</p> <p>2 Q. Okay. And did Mr. Ashton, who you</p> <p>3 say you relied upon, ever tell you that he had</p> <p>4 personally tested Johnson's Baby Powder and found</p> <p>5 tremolite?</p> <p>6 A. Like I said, I don't recall the</p> <p>7 specific discussions I had with Mr. Ashton.</p> <p>8 Q. You don't remember any specific</p> <p>9 discussions you had with Mr. Ashton about talc and</p> <p>10 asbestos, do you?</p> <p>11 A. No.</p> <p>12 Q. And in response to questioning by</p> <p>13 Johnson & Johnson's lawyer, you said that in</p> <p>14 addition to Mr. Ashton, you relied upon two other</p> <p>15 people, Dr. Hopkins and Mr. Chudkowski. Is that</p> <p>16 correct?</p> <p>17 MS. BROWN: Misstates testimony. I</p> <p>18 object.</p> <p>19 A. Those are the names I recalled among</p> <p>20 the, you know, people, many people I spoke to.</p> <p>21 Q. Okay. And are those the people that</p> <p>22 you can recall at Johnson & Johnson who you relied</p> <p>23 upon in approving the statement under oath in the</p> <p>24 Krushinski case that Johnson's Baby Powder never</p> <p>25 contained asbestos in any form, or tremolite?</p>	<p style="text-align: right;">Page 539</p> <p>1 that's been produced about Johnson & Johnson</p> <p>2 developing proof that talc was free of asbestos. We</p> <p>3 asked him questions about non-privileged statements</p> <p>4 like that, about non-privileged information he</p> <p>5 learned through the Worldwide Talc Steering</p> <p>6 Committee of which Dr. Hopkins was a member.</p> <p>7 But a question that is asking for</p> <p>8 particular information on which he relied in</p> <p>9 informing an Interrogatory response in a particular</p> <p>10 case is work product, and I'm going to instruct him</p> <p>11 not to answer that.</p> <p>12 SPECIAL MASTER: Can I ask to impose</p> <p>13 on the court reporter to please repeat the question.</p> <p>14 (The following Question is read back:</p> <p>15 "QUESTION: Okay. And are those the</p> <p>16 people that you can recall at Johnson & Johnson who</p> <p>17 you relied upon in approving the statement under</p> <p>18 oath in the Krushinski case that Johnson's Baby</p> <p>19 Powder never contained asbestos in any form, or</p> <p>20 tremolite?")</p> <p>21 SPECIAL MASTER: This was the same</p> <p>22 issue we dealt with in camera and we specifically</p> <p>23 discussed it. The court's ruling at that time which</p> <p>24 is the same now that if it asked the witness for the</p> <p>25 basis of an answer to an Interrogatory, mental</p>

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<p style="text-align: right;">Page 540</p> <p>1 impression, et cetera, that was work product, but if 2 it was a more generalized question it was 3 appropriate. And then we came back on the record 4 and I recall Mr. Block asked a generalized question. 5 So as to this specific question since 6 it's directed to the specific Interrogatory in that 7 case, and importantly, the witness did not himself 8 verify those particular answers, the objection is 9 appropriate. I think we would have a different 10 result if it was the witness who verified those 11 answers, but that's not the case here. So the 12 objection is sustained. 13 MS. BROWN: Thank you, your Honor. 14 BY MR. BLOCK: 15 Q. Mr. O'Shaughnessy, are you saying 16 that you still, as of today, in 2021, stand by the 17 statement that Johnson's Baby Powder never contained 18 asbestos in any form, or tremolite? 19 A. I do. 20 MR. BLOCK: I have no further 21 questions. Thank you. 22 MS. BROWN: Nothing from me. Thanks 23 so much, Mr. O'Shaughnessy. 24 VIDEOGRAPHER: Stand by. We are 25 going off the record, 4:46 p m.</p>	<p style="text-align: right;">Page 542</p> <p>1 CERTIFICATE OF OFFICER 2 3 I CERTIFY that the foregoing is a true 4 and accurate transcript of the testimony and 5 proceedings as reported stenographically by me at 6 the time, place and on the date as hereinbefore set 7 forth. 8 I DO FURTHER CERTIFY that I am neither 9 a relative nor employee nor attorney or counsel of 10 any of the parties to this action, and that I am 11 neither a relative nor employee of such attorney or 12 counsel, and that I am not financially interested in 13 the action. 14 15  16 ANDREA NOCKS, CCR, CRR 17 Certificate No. XI001573 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 541</p> <p>1 This concludes today's testimony 2 given by John O'Shaughnessy. There are five media 3 units. They will be retained by Veritext. 4 (Deposition adjourns: 4:47 p m., 5 Eastern Standard Time.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

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New Jersey Rules Governing Civil Practice

Part IV, Rule 4:14

Depositions Upon Oral Examination

4:14-5. Submission to Witness; Changes; Signing

If the officer at the taking of the deposition is a certified shorthand reporter, the witness shall not sign the deposition. If the officer is not a certified shorthand reporter, then unless reading and signing of the deposition are waived by stipulation of the parties, the officer shall request the deponent to appear at a stated time for the purpose of reading and signing it. At that time or at such later time as the officer and witness agree upon, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, and any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness. If the witness fails to appear at the time stated or if the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness' failure or

refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under R. 4:16-4(d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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Exhibit 188

6. Cosmetics

PLAINTIFF'S
EXHIBIT
JNJ-567

EXHIBIT

EXHIBIT
J&J-4

Eastern Magnesia Talc Co., Inc. a Johnson & Johnson company

THE COSMETICS INDUSTRY

I. Today's Market

A) EXTENT

- 1). We estimate we have 32.10% of the talc market in cosmetics
- 2). Total talc market in tons, est. 1964 30,000
- 3). EMTCO shipments to 18 customers at 21 plants, '65 9,700
- 4). Potential 21,300

B). APPLICATION

- 1). As a base for perfumed baby powder, dusting powder, foot powder, and pressed cake (packed face powder).

C). COMPETITION

1). Domestic

- a) No. Carolina talc
- b) California talc
- c) Alabama talc

2). Foreign

- a) Italian talc
- b) French talc
- c) Korean talc

D). EMTals for cosmetics

- 1). The following grades, priced f.o.b. the Vermont plants, are sold in the cosmetic industry:

<u>EMTals</u>	<u>Plant</u>	<u>Price per ton</u>	
		<u>Bags</u>	<u>Bulk</u>
500	Johnson, Vt.	\$40	-
549	Johnson, Vt.	75	-
66	West Windsor, Vt.	80	-
600	West Windsor, Vt.	80	-
649	West Windsor, Vt.	80	-
659	West Windsor, Vt.	-	-

EMTAL - COSMETICS

I. Today's Market

D). EMTals for cosmetics

2). No grades are presently shipped to the cosmetics industry from Gassetts.

3). REASONS for EMTals acceptance are special and many

- | | |
|--------------------------------|------------------------------------|
| a) Extremely soft | j) Excellent compressibility |
| b) Low on carbonates | k) Correst density & Particle size |
| c) Low acid soluble substances | l) Meets TGA & USP specs |
| d) Excellent slip | m) Meets customers specs |
| e) White color | n) Domestic source of supply |
| f) Free of grit & "shiners" | o) Bulk shipments available |
| g) High purity | p) Prices advantageous |
| h) Low calcium content | q) Unique flotation processing |
| i) Good adhering power | r) Immediate shipments |

II). Today's Problems

A). SHORTCOMINGS

- 1). Not as white as some approved talcs
- 2). EMTal 66 fails to hold fragrance as well as some competitive talcs
- 3). F.O.B. price of West Windsor EMTals higher than any other known cosmetic talc
- 4). Iron content high
- 5). Johnson grades too high in arsenic content

B). REQUIREMENTS

1) Why ?

- a) To provide softness and smootheness
- b) To give good adherence
- c) To impart a white color
- d) To carry fragrance
- e) To meet USP & TGA specifications
- g) To furnish proper absorbency properties

2) What industry is using (Price range: \$35 - \$80 per ton)

- a) EMTals 66, 500, & 549 (less amounts of 600, 649, & 659)
- b) Italian (Blue Label & Red Label)
- c) Regal (No. Carolina)
- d) Sierra Supreme (California)
- e) W.C.&D. grades (p. 3)

EMTACO - COSMETICS

II). Today's Problems

B). REQUIREMENTS

2) What industry is using

e) W.C. & D. grades

- a) Italian #1600, #1602, #1606
- b) French #8 & #12
- c) Canadian #2406 & #2427
- d) Indian #454
- e) No. Carolina #618 & #1625
- f) Alpine (Alabama) #112
- g) Montana Treasure #1736
- h) California Micro #1731

III). Tomorrow's Market

- A) PROJECTIONS) 1) Anticipated population growth expected to require rapidly increasing amounts of
- B) GROWTH) powder-base cosmetic products for at least
- C) DEMAND) the next decade.
- 2) It is highly unlikely that substitutes for talc-based powders will be an major concern during this period.

D) TRENDS

- 1). All cosmetic talc producers active in promoting new or improved grades.
- 2). Most large users constantly engaged in developing better powders.
 - a) Working with many different talcs
 - b) Aiming at reducing costs
- 3). New markets showing active signs
 - a) Powder for men
 - b) Teen age cosmetics
 - c) Untapped foreign outlets
- 4). Few cosmetic chemists have knowledge or background on basic chemical and physical properties of talcs.
- 5). EMTACO working to replace Johnson EMTals with West Windsor EMTals when and if Johnson cosmetic grades are eliminated due to arsenic content.

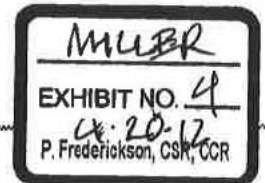
INTCO - COSMETICS

III. Tomorrow's Market

E) CHALLENGE

- 1) A lower price on West Windsor EMTals would assure larger sales volume.
- 2) Added brightness at West Windsor would make EMTals more competitive.
- 3) Elimination of arsenic in Johnson EMTals would assure retaining some 2000 tons valued at approx. \$105,000.
- 4) We need more technical knowledge of our cosmetic talcs; and , in turn, need to convey this to the cosmetic chemists.
- 5) We need technical service personnel and lab facilities to effect direct liaison with present and potential cosmetic customers.
 - a) To develop new markets
 - b) To develop new grades, if necessary
 - c) To improve present grades

Exhibit 189



CIRCUIT COURT OF THE STATE OF MICHIGAN
IN AND FOR THE COUNTY OF WAYNE

CUNNINGHAM, MAGGIE L., et al,	)	No. 88-826653 NP
WILLIAMS, LEO, et al,	)	No. 88-826656 NP
PETERS, MAXINE, et al,	)	No. 88-826658 NP
DUDLEY, WALTER, et al,	)	No. 88-826700 NP
MILES, LOUIS, et al,	)	No. 88-826810 NP
BARBER, THOMAS P., et al,	)	No. 88-826811 NP
HENDERSON, SAMUEL, et al,	)	No. 88-826813 NP
SCALES, LAURA, et al,	)	No. 88-826918 NP
TISDALE, ALEXANDER, et al,	)	No. 88-826807 NP
STEVENSON, PATRICIA, et al,	)	No. 88-827261 NP
STOKES, JESSIE, et al,	)	No. 88-827262 NP
PHILLIPS, LAURA MAE, et al,	)	No. 88-827263 NP
BOMMARITO, PETER, et al,	)	No. 88-827376 NP
MANNING, LEO, et al,	)	No. 88-827378 NP
McDONALD, JOHN F., et al,	)	No. 88-827379 NP
PORTER, FELIX, et al,	)	No. 88-827381 NP
FLEMING, LOUIS, et al,	)	No. 88-827383 NP
HALISON, DOROTHY, et al,	)	No. 88-827453 NP
ALSTON, JAMES DAVID, et al,	)	No. 88-827455 NP
FREEMAN, WOODROW, et al,	)	No. 88-827459 NP
ANTHONY, JOSEPH, et al,	)	No. 88-829107 NP
BAILEY, JOE MEDFORD, et al,	)	No. 88-829109 NP
GANT, PAULINE, et al,	)	No. 88-829113 NP
STEPHENS, GARLIN, et al,	)	No. 88-829115 NP
CUNNINGHAM, JUDGE, et al,	)	No. 88-829116 NP
COLEMAN, JOSEPH, et al,	)	No. 88-829117 NP
OWENS, JAMES, et al,	)	No. 88-829118 NP

Plaintiffs,

vs.

OWENS-CORNING FIBERGLAS
CORPORATION, et al.,

Defendants.

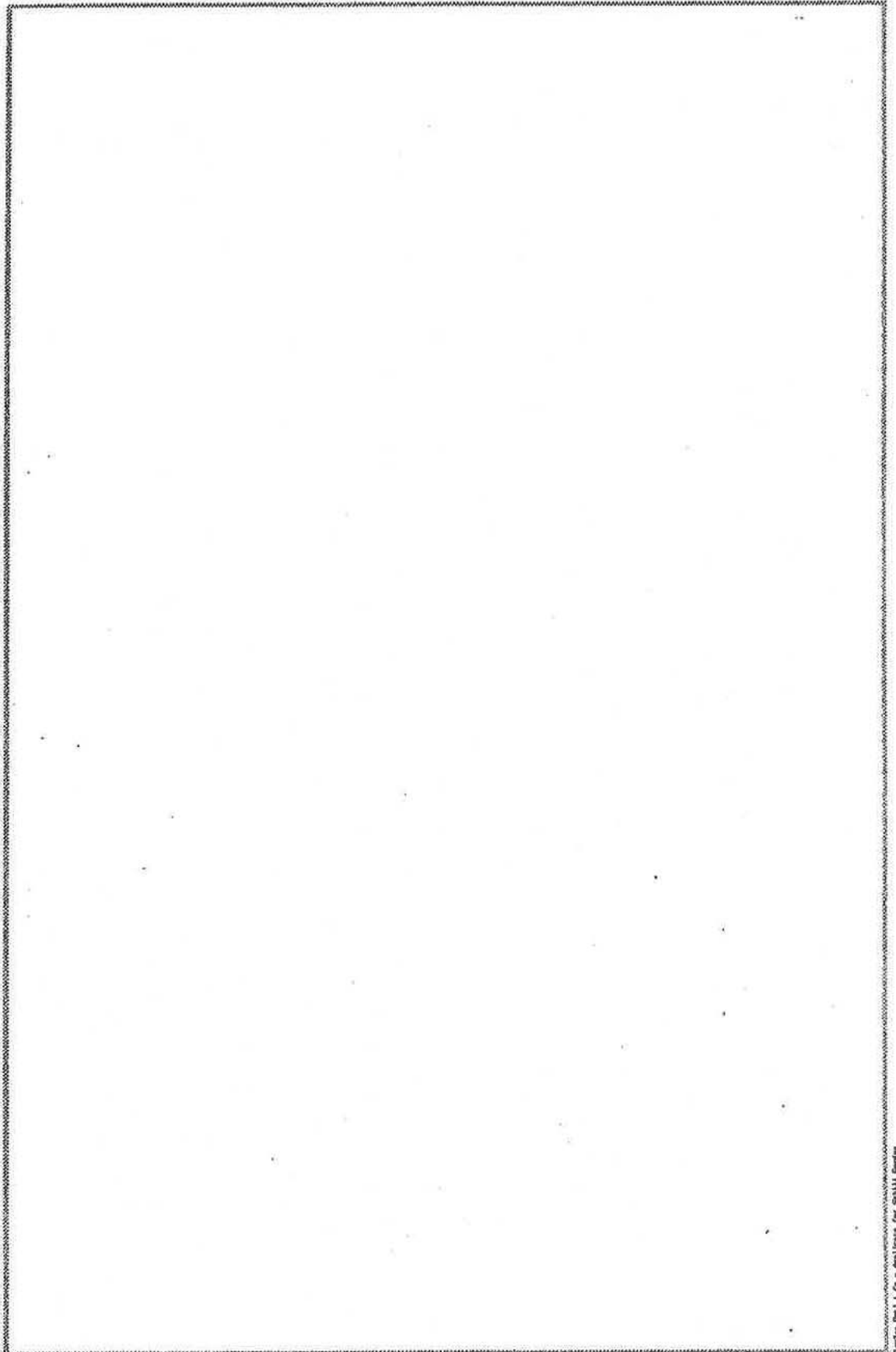
DUPLICATE

Deposition Upon Oral Examination Of

ROGER N. MILLER

DATE: June 12, 1991

REPORTED BY: Leslee J. Unti - CSR#UNTI*LJ502CA



Roger N. Miller - June 12, 1991

APPEARANCES

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DATE: June 12, 1991

REPORTED BY: Leslee J. Unti

■ Exhibit Index

Roger N. Miller - June 12, 1991

Affidavit.....EXHIBIT 1
March 15, 1991 Page

1 SEATTLE, WASHINGTON; WEDNESDAY, JUNE 12, 1991

2 9:00 A.M.

3 --000--

4
5
6 ROGER N. MILLER,

*witness herein, having been
first duly sworn on oath,
was deposed and testified
as follows:*

7
8
9
10 EXAMINATION

11 BY MR. KRISTUFEK:

12 Q Sir, would you state your full name and spell your last name for
13 the court reporter.

14 A Roger N. Miller, M-i-l-l-e-r.

15 Q I understand you are retired; is that correct?

16 A That is correct.

17 Q Give me your address, please.

18 A 10101 Manitow Beach Drive Northeast, Bainbridge Island,
19 Washington 98110.

20 Q How old are you, sir?

21 A 65.

22 Q Mr. Miller, have you ever had your deposition taken before?

23 A Once.

24 Q Was that in any litigation that involved tire plants?

25 A Yes.

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 Q When was that?

2 A It was in Rhode Island in -- I'm not sure of the date. I wouldn't
3 want to guess.

4 Q Do you remember what tire plant that involved?

5 A A plant in Rhode Island.

6 Q Was it a Goodyear plant, Goodrich plant, Uniroyal?

7 A I believe it was Uniroyal.

8 Q Did that involve questions of exposure to talc?

9 A The focus, as I recall it, was on asbestos.

10 Q Any particular type of asbestos? Was it from pipe covering
11 gaskets or on --

12 A I don't remember what the allegations were.

13 Q Let me ask you one more question. Why were you there? What
14 was the reason they were asking you questions?

15 MR. O'SHAUGHNESSY: Note my objection as to the
16 reason why he was there. I assume it was because it was a
17 deposition noticed, but as to why the attorneys might have
18 wanted his deposition, he can't answer that. Subject to that
19 objection, go ahead.

20 Q That's what I am asking, sir. In what capacity were you there?

21 A I had been vice-president of operations of a talc operation,
22 Eastern Magnesia Talc Company, and subsequently was vice-
23 president of operations for Windsor Minerals.

24 Q You probably heard, then, before in depositions two things that
25 most people talk about as kind of ground rules and the first one

By Mr. Kaufman

Roger N. Miller - June 12, 1991

- 1 is if you do have an answer, I would ask that you give it verbally.
2 You have been doing fine up until now.
- 3 A Rather than shake my head. Is that what you mean?
- 4 Q Exactly. The second one is if you do answer a question that I
5 have or anyone has, we will assume that you understood the
6 question.
- 7 A If I don't, I will tell you that.
- 8 Q Great. Thank you. Let's mark this Exhibit 1. Would you take a
9 look at that, please, sir. Do you recognize that?
- 10 A Yes.
- 11 Q That is your signature?
- 12 A Yes.
- 13 Q In a nutshell, the reason we are here is because my client,
14 Owens, has questions of you about this particular affidavit.
- 15 A Okay.
- 16 Q The first thing I would like to ask you from this is it's obvious
17 that you worked for --
- 18 A Eastern Magnesia Talc Company, Inc.
- 19 Q When did you start with them?
- 20 A 1966.
- 21 Q When did you finish with them?
- 22 A In 1967.
- 23 Q Did you ever work for the Eastern Magnesia Talc Company?
- 24 A No.
- 25 Q Did you ever work for Pita Realty?

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 A No.

2 Q What did you do for Eastern Magnesia Talc Company, Inc., from
3 1966 until 1967?

4 A I was vice-president of operations.

5 Q What kind of duties did you have as vice-president of operations?

6 A I coordinated the operation of the mines and mills, the
7 production facilities, the mine production and the mill
8 production. I was responsible for modifications to the mill and
9 milling process. I was responsible for exploration and
10 development in mines, guiding them, supplying the mill.

11 Q One year?

12 A Two years. I came early in 1966 and was finished in September,
13 I believe, of 1967. I'm not certain of the date.

14 Q After September of 1967, what did you do?

15 A Then I went to work as vice-president of operations for
16 Windsor Minerals, Incorporated.

17 Q Prior to 1966, what were you doing, let's say, the year before?

18 A I was vice-president of manufacturing for Buckman Laboratories
19 in Memphis, Tennessee, chemical manufacturing company.

20 Q Let me ask you a little bit about your education. Did you go to
21 college?

22 A Yes.

23 Q And your degree was in what?

24 A Mining engineering.

25 Q What college did you go to?

■ By Mr. Kaufman

Roger N. Miller - June 12, 1991 ▸

1 A University of Washington, Seattle.

2 Q When did you graduate?

3 A 1952, I believe. I can't remember precisely.

4 Q Prior to employment with Buckman, what did you do?

5 A Prior to employment with Buckman, I worked for the
6 W.H. Loomis Talc Company.

7 Q They were a competitor of R.T. Vanderbilt?

8 A They were a competitor of R.T. Vanderbilt.

9 Q Were they ultimately to your knowledge purchased by
10 Vanderbilt?

11 A There was a succession of acquisitions.
12 W.H. Loomis Talc Company during the period I worked for them
13 was sold to the International Talc Company and that was
14 ultimately sold to R.T. Vanderbilt.

15 Q What did you do with Loomis?

16 A I was mine engineer.

17 Q Prior to your employment with Loomis, what did you do?

18 A I was manager for the Border Lord Mining Company operating a
19 tungsten mine on the Canadian border in the
20 State of Washington.

21 Q And can you give me some dates or years?

22 A It lasted about nine months. It was 1952, 1953 and then I went
23 back to Loomis in the Gouverneur district in 1954, 1955 or
24 thereabouts and then to California to operate a mercury mine for
25 Buckman Laboratories in California and from California to

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 Memphis, Tennessee.

2 Q Anything before the tungsten mine?

3 A I was an underground miner in the Coeur d'Alene district in
4 Idaho.

5 Q I don't know if I asked you this. Please excuse me if I did. After
6 you left Eastern Magnesia, you then did what?

7 A I was vice-president of manufacturing for Windsor Minerals,
8 vice-president of operations. Excuse me.

9 Q That was until --

10 A Until I retired in January 1989.

11 Q Windsor Minerals is located where?

12 A In West Windsor, Vermont. The mailing address is
13 Windsor, Vermont. The office is located in West Windsor.

14 Q Was that a competitor or somehow connected with
15 Eastern Magnesia Talc Company, Incorporated?

16 A No. As a practical matter, it was not a competitor.
17 Windsor Minerals focused on highly refined toiletry grade talcs
18 and low grade modestly refined talcs for the roofing industry and
19 in neither of the markets was magnesia a significant factor.

20 Q How far were the deposits that you were mining for the Windsor
21 company? How far were they from the Eastern Magnesia
22 deposits?

23 A Roughly 100 miles.

24 Q We are talking about the Johnson deposit now?

25 A Uh-huh, about 100 miles.

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 Q Let me ask you a little bit about the history if you know of
2 Eastern Magnesia Talc Company, I guess, Incorporated or when
3 it was the talc company. Do you know where it was
4 incorporated?

5 A Eastern Magnesia Talc Company, Inc.?

6 Q Sure.

7 A Incorporated in Vermont.

8 Q Do you know where the Eastern Magnesia Talc Company was
9 incorporated?

10 A No.

11 Q Do you know when it was incorporated? We are talking about
12 Inc. now.

13 A It was incorporated in 1920 -- I don't know. Early.

14 Q Are you aware that there was a merger at some point between a
15 couple talc companies which resulted in the
16 Eastern Magnesia Talc Company?

17 A By reading geological reports of state geologists, I'm aware of
18 that, yes.

19 MR. SARNER: I think we need to be specific about
20 which companies we are talking about. Half the time, I think I
21 know what you are talking about and half the time, I'm not clear
22 so maybe we can come up with a shorthand device or continue
23 to refer to Mr. Miller's previous employer as
24 Eastern Magnesia Talc Company, Inc., later company,
25 Eastern Magnesia Talc Company. I think that's the correct way.

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 Q The company comes after Inc.?

2 A Uh-huh.

3 MR. O'SHAUGHNESSY: You might want to refer to
4 EMTAL, Inc., and EMTAL Company which is the company after.

5 THE WITNESS: Subsequent to my employment.

6 MR. O'SHAUGHNESSY: EMTAL, Inc., versus
7 EMTAL Company.

8 Q You worked for a year and something?

9 A Yeah.

10 Q I am confused about EMTAL Company and EMTAL, Inc. At what
11 point did they split if you know? Do you know what the year
12 was?

13 MR. O'SHAUGHNESSY: They didn't split so maybe
14 you want to ask another question.

15 Q Do you know when they unincorporated?

16 A The sequence of events is that EMTAL, Inc., owned operations
17 in northern and southern Vermont. Those were split in two.
18 The northern operation which was identified with the products
19 produced from the Johnson mine and mill retained the name
20 and the corporate form of Inc. or became company and a new
21 name was ascribed to the southern operations and that new
22 name is Windsor Minerals.

23 MR. SARNER: To clarify for the record, Mr. Miller
24 doesn't have personal knowledge of what transpired after he
25 ceased working for East Magnesia Talc Company, Inc., which we

■ By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 are calling EMTAL, Inc., and the statements about the corporate
2 history of EMTAL Company, my client, the predecessor to
3 Pita Realty Limited, are not correct. The correct information is
4 provided in discovery responses which have previously been
5 provided in this litigation.

6 THE WITNESS: I'm sorry for my error.

7 MR. SARNER: You are not supposed to know.

8 Q Let me ask you then about your knowledge as to each of these,
9 EMTAL Company and EMTAL, Inc. At some point, we have to
10 call them Windsor Minerals as opposed to EMTAL Company. I
11 don't know if that's going to help or not.

12 MR. O'SHAUGHNESSY: That won't help.

13 Q Let me ask you this. Let's just talk about mines. What mines was
14 EMTAL, Inc., operating when you were there?

15 A One mine, the Johnson mine.

16 Q A minute ago, you referenced a north and a south kind of
17 division.

18 A Excuse me. They operated the Johnson mine in the north in
19 conjunction with the Johnson mill and they operated the
20 Hammondsville mine in the south in conjunction with the
21 West Windsor mill and the Gassetts mill.

22 MR. KAUFMAN: What was the second mine in the
23 south?

24 THE WITNESS: Hammondsville.

25 Q So then if I understand this correctly, EMTAL Company retained

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 the rights to the Johnson mill and you --

2 A And mine.

3 Q And you in your capacity at Windsor Minerals assumed
4 responsibility for the Hammondsville mine?

5 A Uh-huh.

6 MR. SARNER: Just to clarify the record, it's spelled
7 out in discovery documents. He doesn't have knowledge, but I
8 feel you are leading him about certain developments. The
9 Eastern Magnesia Talc Company now known as the Pita Mill in
10 1967 that acquired the Johnson mine and mill didn't continue.

11 MR. KRISTUFEK: If you are going to testify, is that
12 all they ever owned or what?

13 MR. SARNER: I'm trying to correct the testimony
14 that you are trying to put on the record. There was no
15 continuation.

16 MR. KRISTUFEK: I can live with that. That's fine.

17 Q Sir, let's talk about the mill, the mill at Johnson first. Are you
18 familiar with the milling process?

19 A Yes.

20 Q What kind of equipment was at the Johnson mill?

21 MR. O'SHAUGHNESSY: At what period of time?

22 MR. KRISTUFEK: I guess we have to assume the
23 period of time that he was there.

24 THE WITNESS: There were two processing circuits
25 there, one of which is referred to as a dry mill and one which is

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 referred to as a wet mill. The dry mill was based on historical
2 practice, crushing, grinding and tumbling mills and produced
3 products largely composed of the total consist of the ore, not in
4 every case but in most cases.

5 The wet mill took the ground material, processed it by
6 flotation and made a second series of products that were highly
7 refined relative to the quality of the ore. The ore as mined is not
8 all talc. It contains carbonates, magnesite in this case.

9 Q Let me digress. The ore is mined. We are talking about talc;
10 correct?

11 A Uh-huh, talc ore.

12 Q Have you ever heard the term soapstone?

13 A Uh-huh.

14 Q What is your definition of soapstone?

15 A A hobbyist's word for a very durable form of mineral talc that can
16 be used for dishes, plates, door sills. It's not a product of
17 commerce in the sense of talc.

18 Q The material that was coming out of the Johnson mine, how
19 would you characterize that, as talc or soapstone?

20 A Talc ore.

21 Q What about Hammondsville?

22 A Talc ore.

23 Q Are you familiar with a mine called Waterbury?

24 A Uh-huh. I know where it is. I'm not familiar with it. It was
25 closed long before I got there.

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- 1 Q But where is it?
- 2 A Waterbury, Vermont.
- 3 Q Where is that in relation to the Johnson mine?
- 4 A About 30 miles south of Johnson.
- 5 Q What about the -- I don't know if it's Reading or Reading mine.
- 6 A That's the Hammondsville mine.
- 7 Q Let's talk about the Hammondsville mill for a moment. What
- 8 kind of equipment did they have there?
- 9 A There is no Hammondsville mill. The mine was run in
- 10 conjunction with the West Windsor mill and the Gassetts mill.
- 11 Q Where is the West Windsor mill in relation to the
- 12 Hammondsville mine?
- 13 A Two miles south.
- 14 Q What kind of equipment did they have at the West Windsor mill?
- 15 A Wet mill there for the production of very, very high grade fine
- 16 toiletries, cosmetic qualities.
- 17 Q When you say high grade, what do you mean by that?
- 18 A Visualize the talc ore as a 50 percent mixture of magnesite and
- 19 talc. The flotation process makes 99 percent talc product and
- 20 rejects the material. The magnesite, using the process we used,
- 21 was a process of flotation where a chemical material is combined
- 22 with water that excelerates the flotation and removal of the talc.
- 23 Q Are you familiar with the term black wall?
- 24 A Yes.
- 25 Q What is that?

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1 A It's a miner's term for a schistose formation that in many
2 instances passes through the ore bodies. It's waste. It's never
3 mined. It is black, very, very black. Talc almost invariably is
4 sold on the basis of its brightness or whiteness so the black wall
5 is carefully avoided.

6 Q Did you say that this can run through the talc ore itself?

7 A It can run through the zone in which mining is conducted.

8 Q Do you know what the mineral composition of black wall can be?

9 A No, I don't. It's indefinite. It's a local name that miners applied
10 to anything that didn't look like talc.

11 Q Were there black walls at the Johnson mine?

12 A There were some, yes.

13 Q Were there black walls at the Hammondsville or the Reading
14 mine?

15 A Very, very few.

16 Q Let's talk about Exhibit 1, sir, if we can. It's in front of you there.
17 I would like to talk about this third paragraph where it says
18 "All of the talc sold to the tire and rubber industry by East
19 Magnesia Talc Company, Inc., including Grade 41 and other
20 grades -- I think that's in.

21 A That's right.

22 Q -- in the "40" series was mined from the Johnson talc mine in
23 Johnson, Vermont." I assume you have been to the Johnson talc
24 mine?

25 A Yes.

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1 Q Have you ever been inside of it?

2 A Yes.

3 Q How many times?

4 A Well, in the almost two years I was up there, I was underground
5 at the Johnson mine twice a week.

6 Q Why?

7 A Because part of my responsibilities were to direct the
8 operations, to oversee the operation. The mine superintendent
9 worked for me.

10 Q Who chose where ore was mined? Was it the superintendent or
11 yourself?

12 A On a day to day basis, the superintendent did. On a generalized
13 basis, I did.

14 Q How did the mining process occur at Johnson? Was that an
15 above ground mine or below ground mine?

16 A Underground mine.

17 Q What kind of equipment did you have there?

18 A It was mined by conventional drill and blast using dynamite and
19 using a device called a scraper to transport the ore horizontally
20 to a loading shoot. The loading shoot delivered it into two-ton
21 cars. Five of the cars were towed by a battery powered
22 locomotive on track and taken horizontally under the ore body to
23 the shaft. They were dumped into what is called a skip pocket
24 and loaded into the skip which is the bucket that rides on rails
25 in the shaft, taken to the surface and transported by truck to the

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1 mill.

2 Q What about down in the Hammondsville or the Reading mine?
3 How was that ore mined?

4 A Essentially the same way.

5 Q Same type of equipment?

6 A Same type of equipment.

7 Q Grade 41 or the 40 series, what does that refer to?

8 A Eastern Magnesia Talc Company, Inc., had a practice of
9 identifying the products by number identifiable with a particular
10 mill. At the Johnson mill, there were two product series. One
11 started with four and one started with five. At the West Windsor
12 mill, there was a product series that started with six and at the
13 Gassetts mill, there was a product that started with three. I
14 think it had to do with the historical order of building of the
15 mills.

16 Q The last mill, where was that located?

17 A Gassetts, Vermont.

18 Q What was milled there?

19 A Hammondsville ore.

20 Q So Hammondsville ore or Reading were sent to two mills?

21 A Yes.

22 Q In your position, were you familiar with the output of the mines?

23 A Yes.

24 MR. O'SHAUGHNESSY: Objection.

25 THE WITNESS: You mean tonnage of output?

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1 Q Exactly.

2 A Yes.

3 Q Can you give me any idea of the rough tonnage output per day or
4 I don't know how you would measure it. Was it per month, per
5 year?

6 MR. O'SHAUGHNESSY: Which mine are we talking
7 about?

8 MR. KRISTUFEK: The Johnson mine first.

9 MR. O'SHAUGHNESSY: In the years he was there?

10 MR. KRISTUFEK: Apparently the year that he was
11 there, a little more than a year.

12 THE WITNESS: I am relying on my memory.

13 MR. O'SHAUGHNESSY: He may know prior to that.

14 MR. KRISTUFEK: Let's start with the time he was
15 there.

16 THE WITNESS: During the time I was there, I
17 believe the total annual output was about 80,000 tons a year, but
18 I'm not certain of that.

19 Q I understand, sir. That's fine. What about Hammondsville?

20 A It varied with market conditions and our customers' markets
21 from about 48,000 tons when I first got there to 110,000 tons
22 and back down to about 48,000 tons.

23 Q There is some suggestion you may be aware of tonnage output for
24 years that you weren't out there. Might that be the case?

25 A I would only be guessing. I really don't have those numbers.

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1 Q What about mill output? How did that vary from the mine
2 output?

3 A In the case of the Johnson mill as an example, let's assume that
4 half of the feed went to the dry mill where the whole ore is
5 ground, bagged and shipped so there is 40,000 tons. The other
6 half of the ore, only a third of those other 40,000 tons would
7 ever be shipped because the concentration process only pulls
8 the very best talc out so there would be 12,000 more. The
9 output from the mill in total in the example that I am using
10 would be 52,000 tons a year. The balance of the material waste
11 by-product was stored in waste ponds, tailings ponds.

12 Q What was the reason to store it in a waste pond?

13 A In the wet process, you pump the tailings out.

14 Q How about West Windsor?

15 A The West Windsor mill, the formula is almost exactly the same.
16 If the annual production of the West Windsor mill was
17 25,000 tons, then 75,000 tons of ore would be processed by the
18 mill and 25,000 tons roughly of product would result. The
19 balance of it would be returned as wet tailings to the tailings
20 pond.

21 Q The Gassetts mill?

22 A It's a dry mill and if 25,000 tons went in, 25,000 tons came out.

23 Q How many people to your knowledge worked at the Johnson
24 mine while you were there?

25 A Underground at the Johnson mine, I believe we varied between

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1 12 and 15 plus supervision. There would be three supervisors
2 so from 15 to 18 is my recollection.

3 Q The supervisors, what were their titles or responsibilities?

4 A Mine superintendent, mine foreman and mechanical foreman.

5 Q What did they do specifically?

6 A The mechanical foreman was responsible for the direction of the
7 activity of the maintenance crew in the mine. The mine
8 foreman is the person who traveled continuously through the
9 mine working with the men to keep them at their tasks and the
10 mine superintendent did the general planning and direct
11 supervision. He told the mine foreman where to take the
12 miners to work.

13 Q Do you recall the names of any of those three positions?

14 A The only one I remember is a guy by the name of Beanie Bradley.
15 He was a mine foreman. I really don't remember the mine
16 superintendent's name I was there for such a short period of
17 time.

18 Q What about the Hammondsville or Reading mine?

19 A The mine superintendent was Win DeZaine and there were a
20 series of mine foremen, Ned Kandall, two or three people that
21 worked for him.

22 Q What about the mill? How many folks worked on average at the
23 mill?

24 A The mill generally --

25 MR. O'SHAUGHNESSY: Johnson mill?

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1 MR. KRISTUFEK: Yes.

2 THE WITNESS: The mill generally ran three shifts
3 and I believe there were -- My recollection is there were about
4 18 people there and four supervisors. There would be a
5 shipping supervisor, a mill superintendent and two shift
6 foremen. I'm not certain of that.

7 Q Do you recall the names of any of those people?

8 A I tend to forget them when they die. I'm sorry.

9 Q What about the other two mills?

10 A At the West Windsor mill, the mill superintendent was
11 Steve Hastings. There was a mechanical foreman there and two
12 additional shift foremen there and at the Gassetts mill,
13 Ken Dudley and then Burton White. Ken Dudley was discharged
14 and Burt White -- There have been a lot of changes since that
15 time. I have given you what the initial conditions were assuming
16 that's where your interest is.

17 Q How do you know there were changes since that time?

18 A Because I ran the West Windsor mill and the Gassetts mill for
19 25 years.

20 Q You are just talking about the Gassetts mill?

21 A Yes.

22 Q Eastern Magnesia Talc Company, Inc., did it have a corporate
23 office?

24 A Corporate office, yes.

25 Q Where was that?

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1 A In Burlington, Vermont when I first arrived.

2 Q Do you know whether or not that corporate office is still there
3 today?

4 A No. I know for a fact that it's not.

5 Q Did that office have a sales department?

6 A Yes.

7 Q Do you recall anyone who worked in the sales department?

8 A Yes.

9 Q Who might some of the people be?

10 A The then president of Eastern Magnesia Talc Company was also
11 really the sales manager and his name was Emil Esckilsen.

12 Q Is he alive?

13 A No.

14 Q How about anyone else, secretaries or assistants?

15 A There was another salesman. Eastern Magnesia Talc Company,
16 Inc., sold their products largely through agent distributors so
17 the sales effort on the part of the

18 Eastern Magnesia Talc Company was in substantial part dealing
19 with agents and distributors and Emil did a lot of that. There
20 was another man who did that and I am trying to come up with
21 his name. If I think of it, I will give it to you.

22 Q I appreciate that. Who were some of the distributors who were
23 the distributors of the agents if you recall?

24 A I didn't have a lot to do with sales at that time. One of them was
25 the Hall Company.

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- 1 Q W.C. Hall?
- 2 A Yes. They were one and one was Charles B. Crystal. One was in
- 3 Canada. I don't remember, something like Christianson.
- 4 Q Let me ask you about the trade names for the product. Were
- 5 there any trade names for the final product that came out of the
- 6 Johnson mill?
- 7 A Generally speaking, the name EMTAL was the identification.
- 8 Q Did that hold true for the product that would leave the other two
- 9 mills also?
- 10 A Yes, until the change to Windsor.
- 11 Q And at that point, how was the Windsor material marked?
- 12 A We just simply used a grade number. We didn't have a
- 13 trademark. We had Windsor Minerals, Inc., as the name of the
- 14 company, but we didn't use EMTAL. The word EMTAL went
- 15 with the change in ownership.
- 16 Q Are you aware of how Eastern Magnesia Talc Company, Inc.,
- 17 labeled its products prior to 1966?
- 18 A No.
- 19 Q How about after 1967?
- 20 A No.
- 21 Q Mr. Miller, have you ever heard of the term micronizer?
- 22 A Yes.
- 23 Q What is that?
- 24 A High energy device that's used to provide extremely high surface
- 25 areas on mineral products by subdividing them into very, very

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1 small sizes. It has become a generalized word. Originally it
2 described a particular piece of machinery, but it's kind of like
3 Kleenex. It's become the generic word for ultra fine grinding.

4 Q How fine can you grind something using a micronizer if you
5 know?

6 A Typically products are described by the percentage which passes
7 a 325 mesh screen and with the micronizer, it was possible to
8 get to 99 percent finer than a 325 mesh screen. The rate at
9 which you did that is a function of the material which you are
10 grinding. With diamonds, it would take a long time. With talc, it
11 didn't take very long at all.

12 Q Did Eastern Magnesia Talc Company, Inc., own any micronizers?

13 A No.

14 Q During the mining process, what steps were taken, if any, to
15 control, let's call it, the grade of the ore as it came out, what
16 they took from the ground?

17 A Well, there was a long sequence involved in that. The unmined
18 areas were initially diamond drilled. Are you familiar with what a
19 diamond drill is?

20 Q No.

21 A It's a core drill device with a diamond bit which drills
22 downward, breaks off a piece of rock and comes out with a long
23 section of the rock so you can examine and test the material.
24 Ahead of the mining workings, this was done from above, from
25 older workings above or alongside. Based on the information

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1 that was determined in the diamond drill holes, the direction of
2 the workings would be driven and where the working was driven
3 would be based on the requirements of the mill.

4 The ore bodies are not homogenous. They grade laterally
5 across the ore bodies so where you put the mine opening and
6 where you went from the opening were dictated by the demands
7 of the mill, what products were required coming out of the mill.
8 It is secondary information because you only had information in
9 one plane. The secondary information pilot holes would be
10 drilled ahead of the face to confirm that the opening was going
11 into the zones that were appropriate.

12 Q So you would use these diamond core drills to pick your --

13 A Examine the ore body.

14 Q Were there logs made of the core that was taken out or
15 examined?

16 A Well, if you were examining a new ore body that you hadn't
17 mined before, these cores would be very, very carefully
18 examined, tested, logged and retained until you began to mine.
19 The routine diamond drilling that was done as a grade control,
20 ordinarily not. The core was examined by the mine
21 superintendent. He could determine visually the quality of
22 materials that had been intersected and then he could make a
23 determination. He and I looking at the core could make a
24 determination where the headings were going to go.

25 Q Visual examination as opposed to chemical?

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1 A Largely it was a visual determination. There were routine
2 samples taken out. Not every inch of it was sampled, but routine
3 samples were taken of it to confirm visually. If you have done it
4 for awhile, you get into identifying what the quality of the
5 materials are.

6 Q Sometimes they were, it sounds like, really tested and
7 sometimes they were visually examined?

8 MR. O'SHAUGHNESSY: Note my objection to the
9 question. Really tested, that's your term.

10 MR. KRISTUFEK: I understand that.

11 MR. O'SHAUGHNESSY: You are mischaracterizing
12 what he said.

13 Q Mr. Miller, the times that the drill cores were analytically
14 examined and a report made, where did the report go?

15 A The report generally came to me and the detailed analysis was
16 not always done in-house. If we were curious about other
17 mineral species, if we were interested in more detailed
18 information -- Some of the heavy metals are very difficult to
19 analyze in a typical talc mills lab so we would do the
20 examinations in outside laboratories. Those would come back to
21 me for my guidance. The mineralogical assessment because I
22 also had a degree in geology or one course short of a degree in
23 geology, I did a lot of the mineralogical assessment and I was
24 very much aware of the qualities we were seeking and the
25 materials that we were avoiding.

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1 Q Who did the examination other than the mineralogical kind of
2 look see that you took a look at?

3 MR. O'SHAUGHNESSY: Note my objection to the
4 form. You are mischaracterizing his testimony with respect to
5 what he did.

6 THE WITNESS: The examinations were done by
7 Batelle. The Batelle Memorial Institute did some at one stage
8 when we were looking at flotation testing of new ore bodies and
9 I am trying to think of the outfit in Ohio.

10 Q Where is the first place located?

11 A Batelle was in Columbus, Ohio. At that time, they had a minerals
12 section. I don't believe they do now. L.C. somebody. If I think of
13 it, I will give it to you.

14 Q They were in Ohio?

15 A Yes.

16 Q We have been going for an hour. Would you like to take a break?

17 A I'm fine.

18 (A short recess was taken.)

19 Q Sir, I want to go back to these designations for the different
20 products.

21 A The four series and five series were out of Johnson mine and
22 mill and had been since the beginning of the operation.

23 Q Did the numbers have any significance other than identifying a
24 particular mill?

25 A The four series and five series made the distinction in the

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1 Johnson mill between the dry products and floated products so
2 they had that significance. They identified the subunit in the
3 whole processing affair where the product had come from.

4 Generally speaking, the higher the number, the finer the
5 degree of subdivision. 599 was finer particle size than 549 and
6 549 was finer particle size than 500. In the 40 series, that's not
7 true. 41 was the finest of the products. It wasn't a very fine
8 product, but it was the finest of the products made in the dry
9 mill.

10 Q Do you know what the mesh size or the grade would have been
11 for the 41?

12 A My recollection is that it was about 92 percent through
13 325 mesh screen.

14 Q And the 42?

15 A 42 is about 88 to 90, I believe.

16 Q That same 325 mesh?

17 A Yes.

18 Q Would you ever -- I anticipate you will say no, but I will ask you
19 anyway. Would you ever find a final product coming from the
20 West Windsor mill with the designation of 40 anything on it?

21 A No.

22 Q With all of this, how do you know that all of the talc which was
23 sold to the tire and rubber industry came from the Johnson
24 mine and that's No. 3 in your affidavit?

25 A What I tried to say here is that during my tenure, during the

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1 period I was employed, all of it did and to the degree that I was
2 informed by others who had been there over a long period of
3 time, it was my understanding that that was true. I had no
4 information that would suggest otherwise.

5 MR. O'SHAUGHNESSY: For the periods prior to
6 1966 and 1967?

7 THE WITNESS: Yeah, that it would reach back. The
8 development of the markets takes a long, long time.

9 Q You knew that from how?

10 A Discussions with the shipping superintendent who had been
11 shipping material to various customers.

12 Q Who was he again?

13 MR. O'SHAUGHNESSY: Let him finish.

14 THE WITNESS: And discussions with the guy that
15 ran the mill. These customers didn't arrive when I arrived.
16 They had been doing this for an extended period of time was the
17 presumption I made from the conversations with them.

18 Q And the shipping supervisor was who again?

19 A I was trying to think of the name. I will think of it.

20 Q When you do, sir, please let me know. Just so I understand this,
21 does this third sentence here in this affidavit mean that nothing
22 from the Windsor mill or the other mill ever went to the tire
23 and rubber industry?

24 A To my knowledge, nothing ever did.

25 Q When did Eastern Magnesia -- I don't know if we should call it

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1 talc company, Inc., or talc company -- ever begin mining in
2 Vermont? You might have picked this up --

3 MR. O'SHAUGHNESSY: Excuse me. I will object to
4 the form. I think it's become confused.

5 Q Do you know when EMTAL aside from the Inc. and company
6 designation ever began mining in Vermont?

7 MR. O'SHAUGHNESSY: Note my objection to the
8 form because EMTAL wasn't a company. It was a trade name for
9 product. Is that what you are asking about? When was the trade
10 name first used according to your knowledge?

11 MR. KRISTUFEK: That's fine.

12 THE WITNESS: I don't know when it was first used.

13 Q Do you know when the companies that sold the trade name
14 product EMTAL ever began mining in Vermont?

15 A I know something of the history of talc mining in Vermont.
16 Based on what I know of that history, I believe that it coincided
17 with the final development of the railroads and so forth so about
18 1927. I believe 1922 to 1927 were the earliest commercial
19 productions of talc. It's a very erratic history because the
20 rainstorms washed out the railroads so they had to move from
21 one place to another.

22 Q As deposits go, were any in Vermont larger than others?

23 A Yes.

24 Q Which was the largest to your knowledge?

25 A The largest talc deposit was the Hammondsville mine.

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1 Q How did the Johnson mine compare to Hammondsville size
2 wise?

3 A Probably three quarters of the size.

4 Q Can you tell me how talc was formed in Vermont geologically.

5 A There is a fair amount of debate about that particular subject. It
6 is a metamorphic derivative of the hydrothermal and dynamic
7 metamorphism of serpentinite with the addition of carbon
8 dioxide and water from outside sources.

9 Q When you say serpentinite, which of the serpentines are we
10 talking about?

11 A Serpentinite is a metamorphosed form of serpentine. It's a
12 two-stage operation to my understanding.

13 Q Mineralogically, isn't there a name for serpentinite including
14 what, antigorite and chrysotile?

15 A There is a series of minerals that form the rock serpentine. I
16 don't happen to remember all of them. Chrysotile is uncommon
17 in serpentine. Many serpentines contain no chrysotile at all, but
18 serpentine is a rock. It's like granite. It's composed of
19 minerals. Do you understand?

20 Q Sure. Is serpentine a generic name for a rock or specific
21 mineral name for a rock?

22 A It's like granite. Granite can have varying compositions and
23 serpentine can have varying compositions so it is a generic name
24 for hydrous magnesium silicate minerals, assemblage of
25 minerals.

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1 Q The talc formed from this?

2 A It formed from there with the addition of time, temperature,
3 pressure, carbon dioxide and water. It occurred at the contact
4 between serpentine and other rock.

5 Q Is there something between or at that contact point of the talc
6 and what's called serpentine country rock?

7 MR. O'SHAUGHNESSY: Let me object to that. I
8 don't think that's what I heard him say, the talc and serpentine.

9 Q I would be more than happy to ask another question.

10 A Okay. Try it again.

11 Q Where you find the talc, is there just this serpentine and talc or
12 is there something between the two?

13 A The metamorphic process is gradational. The talc deposits form
14 at the extremity. Then there is a gradational zone that is not
15 serpentine and is not talc and then there is serpentine.
16 Serpentine is the dark core if there is a core.

17 In some deposits, there is no evidence of serpentine at all,
18 but none of the transitional zone is commercial. It's a hard dark
19 color, has no commercial value. The talc is mined outside of
20 that transitional zone in the fully metamorphosed portion of the
21 deposit.

22 Q How do you know the difference between talc and the
23 transitional zone?

24 A You tell it by the mineral assemblage, by the density, by the
25 compactness. The talc is very obvious because it occurs in

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1 micaceous plates, easy to see, very easy to see.

2 Q There is then a distinct visual difference between the
3 gradational zone and the talc?

4 A No. There is a gradational zone, but it's very obvious if you are
5 mining, very obvious.

6 Q Was there any analysis done of the gradational zone of the talc
7 deposits at Johnson?

8 A I'm sure that there was. Looking at the chemistry, the chemical
9 analysis, I can recognize when we have come out of the zone
10 because the talc invariably co-exists with magnesium carbonates
11 and no carbonates in the transitional zone so looking at the
12 chemical analysis, you can also see that you are at or near the
13 margin because the carbonate content goes down.

14 Q Did you ever do any written reports about what was in that
15 gradational zone?

16 A No.

17 Q Do you know whether or not anyone else ever did?

18 MR. O'SHAUGHNESSY: Anyone in the world?

19 MR. KRISTUFEK: Anyone, anyone who worked at
20 the company while he was there.

21 THE WITNESS: No, no one that worked at the
22 company did.

23 Q Anyone who worked outside of the company who was hired by
24 the company to analyze the sample gradational zone?

25 A I don't believe so.

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1 Q Was there a mineralogist on staff?

2 A No.

3 Q How about a geologist?

4 A Summer times, we hired geologists to do field work.

5 Q Can you recall the names of any of those people?

6 A William Gregg is one.

7 Q Anybody else?

8 A He is really the only one I can remember.

9 Q Is he still alive to your knowledge?

10 A Yes.

11 Q Where would he be located?

12 A He is a professor at Michigan College of Mines and Technology.
13 I think that's the right name, Michigan Tech.

14 Q Mr. Miller, do you know whether or not any geological maps or
15 sketches were done of the Johnson or Hammondsville mines?

16 A A very extensive geological map was done by the
17 United States Geological Survey at the time of the second world
18 war. The U.S.G.S. was charged with attempting to find steatite
19 deposits because of its unique properties and as part of that
20 program, a very thorough examination of the mines and the mills
21 was done in Vermont.

22 Q When you mention steatite, what do you mean by that?

23 A Steatite is a compact, very dense form of talc that can be
24 machined as if it were a metal and during the second world war,
25 it was used as an insulator in large switch gear. Since then, they

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1 have learned to set the size by compressing as an ordinary talc.

2 Q Was steatite found in Vermont?

3 A No.

4 Q Do you recall the authors of any of these reports?

5 A Probably the most significant is Chidester. His is the report that
6 I have seen most often.

7 Q If I made the distinction between geological maps or sketches
8 and geological reports, would you direct me to Mr. Chidester for
9 both?

10 A Yes, I would. His work provided the basis of understanding that
11 I have of where those talc deposits came from and how. The
12 distinctions he made and the significance of the mineral
13 assemblages, I relied on Chidester's work. I had no reason after
14 25 years to dispute his conclusions from my own observation.

15 Q What about the term cinder? Have you ever heard that before?

16 A Uh-huh.

17 Q I am speaking now in terms of the talc mining context. What
18 significance does that have to you? What does it mean to you?

19 A It is a miner's term, I believe, that is associated with basalt dikes
20 that pass through the talc deposits. There was fairly active
21 volcanism after the talc deposit was formed and the residual
22 fractured pieces of these things I believe the miners referred to
23 as cinders.

24 Q Where do they find the cinders?

25 A Right in the talc deposit.

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1 Q Any particular size range?

2 A All sizes, all shapes.

3 Q It could be an inch?

4 A It could be an inch.

5 Q It could be five feet across?

6 A It could be 30 feet. They are an intrusion into the ore body is
7 my understanding of what the term meant.

8 Q The intrusion of what?

9 A The molten magma.

10 Q Not necessarily the gradational zone?

11 A No.

12 Q What about the country rock?

13 A The basalt dikes come out of the country rock through the talc
14 deposits and keep on going. They are a field factor.

15 Q Have you ever heard of the term chrysotile?

16 A Yes.

17 Q How about tremolite?

18 A Yes.

19 Q What about actinolite?

20 A Yes.

21 Q Pyrophyllite?

22 A Yes. I'm not very familiar with that.

23 Q Of those four minerals, do you know if any were ever found in
24 Vermont?

25 A In Vermont?

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1 Q Yes.

2 A Yes. There is a chrysotile mine in northern Vermont and I have
3 seen actinolite. I have rarely seen a tremolite crystal, not in the
4 ore body but prospect in the bag and pyrophyllite.

5 Q You saw actinolite. Where did you see that?

6 A I saw actinolite in fault zones where there had been
7 hydrothermal activity.

8 Q Where were the fault zones?

9 A In the country rocks, in the wall rocks.

10 Q Are we talking about the Johnson mine or the Hammondsville
11 mine?

12 A I don't think I saw actinolite ever at Johnson. I have seen it in
13 some deposits in Windham County.

14 Q Can you recall the names of any of those deposits?

15 A No. These were unworked, small deposits.

16 Q Were you ever in the Waterbury mine?

17 A No.

18 Q Are you aware or do you know whether or not any of those four
19 minerals I just talked about a minute ago were ever found in
20 association with the Eastern Magnesia Talc Company, Inc., or
21 company operated mine?

22 A Ask me again. That's a very wide ranging statement.

23 Q Of the four minerals I am looking at, chrysotile, tremolite,
24 actinolite and pyrophyllite, do you know whether or not any of
25 those four were ever either found in or associated with a talc

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1 deposit that was operated by the Eastern Magnesia
2 Talc Company or Company, Inc.?

3 A I don't know anything about the Eastern Magnesia Talc Company.

4 Q I don't know what you might have heard.

5 A I didn't hear very much at all. I was 100 miles away. Of the
6 other minerals that you listed, I in a diamond drill core once saw
7 actinolite, bladed dark green crystals in a zone in which it
8 turned out there wasn't any ore. I never saw chrysotile in a talc
9 mine, in an ore zone, in a waste zone. I never saw any down
10 there. I didn't ever recognize tremolite in the mines. I never
11 did see any to recognize what it was. Pyrophyllite is kind of a
12 mineral curiosity and I am sure I never saw anything that I
13 identified or recognized as pyrophyllite.

14 Q When you say you never recognized tremolite, do you know what
15 it looks like?

16 A Uh-huh.

17 Q Do you know what --

18 A I worked at Loomis Talc.

19 Q That's right. You certainly would have been aware of it there.
20 Mr. Miller, are you aware of the OSHA definition of asbestos?

21 A About four years -- I'm not sure of the current definition.

22 Q Could you give me your best recollection as to what the
23 definition was?

24 A My understanding was that it was the asbestoform varieties of
25 about five minerals, tremolite, actinolite, chrysotile, amosite,

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1 crocidolite. This was my understanding and I am not sure
2 where the debate is now between asbestoform and non-
3 asbestoform varieties of some mineral grams.

4 Q What's the difference between asbestoform and non-asbestoform
5 to your knowledge?

6 A Under a microscope in my understanding of asbestoform, the
7 fibrils are visible. In the non-asbestoform varieties, the crystals
8 are bladed and don't look like the ends of a broom. I'm not a
9 mineralogist.

10 Q Are you aware of any sales of Eastern Magnesia Talc Company or
11 Company, Inc., products to any particular tire companies?

12 MR. O'SHAUGHNESSY: Let's limit it to what you
13 have noticed him for in this suit in Michigan.

14 MR. KRISTUFEK: Sure. Fine. We can come back.
15 That's your choice. I am just trying to simplify this.

16 THE WITNESS: We have to make a distinction
17 between company and company, Inc. I have no understanding,
18 no knowledge at all of --

19 MR. O'SHAUGHNESSY: We are talking over each
20 other to a certain extent.

21 THE WITNESS: I have no understanding of markets
22 for the talc company. In the case of Inc., I am not personally
23 aware of shipments to any rubber company. I knew there was a
24 market. I didn't know where the markets were.

25 MR. O'SHAUGHNESSY: That's true beyond

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1 Michigan, too, I take it.

2 THE WITNESS: Yes.

3 MR. KRISTUFEK: Wait a minute. Maybe I want to
4 come back and ask him again. I appreciate that. I appreciate
5 the clarification by Mr. O'Shaughnessy as to the extent of
6 Mr. Miller's answer.

7 Q Let me ask you about the Johnson mine and about the
8 Hammondsville or Reading mine. The ore in the two mines, was
9 it the same or was it different?

10 A It was different.

11 Q How was it different?

12 A It was different in the microcrystalline size of the talc platelets.

13 Q One being bigger and one smaller?

14 A The Hammondsville mine in relative terms was a four by four
15 dimension. The Johnson mine was a two by four dimension.

16 Q Other than the size of the platelets, mineral composition or
17 accessory minerals, was there a difference?

18 A Essentially the same.

19 Q The talc ore itself at the Johnson mine and I would also like to
20 ask you about the Hammondsville mine, was that a continuous
21 band or was it little lenses and pods?

22 A It varied from a long strike. On the lateral dimension, it would
23 occur as pods and some of them were 700 feet thick and 600
24 feet high and some were 50 feet thick and 200 feet high. They
25 were a wide range of metamorphism that had taken place.

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1 Q What about Hammondsville?

2 A Hammondsville, there were three discrete pods. One of them is
3 2,200 feet in one dimension and up to 200 feet in the other
4 dimension. The others were smaller than that.

5 MR. KRISTUFEK: What I want to do is take about
6 seven minutes for myself and I may not have much more to do.

7 *(A short recess was taken.)*

8 Q Sir, we talked about cinders at the Johnson mine. Were there
9 also cinders in the Hammondsville or Reading mine?

10 A Yes.

11 Q How prevalent were they?

12 A Uncommon.

13 Q Now, the end product that came from the Johnson mill, that was
14 sized by going through a 325 mesh?

15 A No. They would be tested. They would measure the percentage,
16 went through the 325 mesh screen and that defined the product
17 specifications in many cases.

18 Q Other than that mesh screening test, was anything else done in
19 terms of the final product, mineralogical analyses or chemical
20 analyses?

21 A The chemical analyses were done to determine what is called
22 the insoluble content. Physical measurements were made of
23 color, reflected basically particle size, distribution of bulk
24 density. The materials were tested for extraneous minerals.

25 Q Who did this testing?

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1 A This was done, as I said, in-house but also outside and I am still
2 trying to think of the name of the guys in Ohio that did that.

3 Q The in-house tester was who again?

4 A The lab technician.

5 Q Which?

6 A I don't remember his name.

7 Q What do you mean by insoluble content?

8 A Talc is relatively insoluble and in order to determine the
9 proportion of talc and magnesite, you extract the magnesite with
10 acid and weigh the remaining material and that would tell you
11 generally speaking the talc content. These all have to be
12 tempered with your own experience.

13 Q Extraneous minerals, what did that mean?

14 A That would be mica from the wall rocks. As you approach the
15 contacts on them, there would be a zone that would have mica in
16 it and mica, generally speaking, is dark colored but not always
17 and it's fairly easy to see under a microscope, see the difference
18 in the physical characteristics so they would look for mica and
19 basalt. A color test was a significant determinant because the
20 non-talc non-carbonate minerals are dark colored and color is a
21 critical specification of talc products so any change in color
22 would be obvious.

23 Q The color concern was as the ore came from the mill as opposed
24 to how it would look after firing or something like that?

25 A Yeah. The ore from these deposits is not typically used in fired

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1 products.

2 Q The brightness was used distinct from a question about firing?

3 A Yes.

4 Q The contact zone, was that as sharp?

5 A Yes, the contact zone to the country rock.

6 Q Exactly and the same thing about the Hammondsville or Reading
7 mine. Were the same tests conducted on the product coming
8 from the mill?

9 A Yes and more extensive mineralogical examinations because of
10 the application in toiletries and cosmetics.

11 Q If I understand you then, the Reading or Hammondsville mine
12 and mill produced a cosmetic grade talc?

13 A The Hammondsville mine produced ore which fed two mills, the
14 West Windsor mill and the Gassetts mill. The West Windsor mill
15 produced only cosmetic materials.

16 Q And the Johnson mine and mill did not or did produce
17 cosmetics?

18 A They produced a very minor quantity of cosmetic
19 materials.

20 MR. KRISTUFEK: That's all I have. I told you I
21 would try to make it painless. I appreciate your time.

22 MR. O'SHAUGHNESSY: Could I have 15 seconds?
23 I don't want to take a break, but 15 seconds before
24 we start.

25 MR. KAUFMAN: Sure.

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EXAMINATION

BY MR. KAUFMAN:

Q Hi. I just have a few questions.

A You are Steve Kaufman?

Q Correct. Did you review any materials before your deposition today in --

A No. I reread my statement.

Q That's this one-page affidavit; is that correct?

A Yes.

Q Are you familiar with the different uses of talc?

A In the markets that were served by Windsor Minerals, yes.

Q When you say Windsor Minerals, how about Eastern Magnesia Talc Company, Inc.?

A Just slightly.

Q What was your position at Eastern Magnesia Talc?

A I ran the mine and the mill.

Q So you weren't involved with the uses of --

A Marketing and selling, no.

Q Are you familiar that the talc is used in the rubber industry?

A Yes.

Q What would the purpose of that be?

A My understanding is it's used as a parting agent.

Q But as far as any particular tire plants that the talc may have been shipped to from your company at that time, 1966, 1967, you are

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1 not aware of anything, of any particular companies or prior to
2 that; is that correct?

3 A No.

4 Q Are you familiar with whether or not there is a controversy as to
5 whether or not some talcs may contain asbestos?

6 A I'm aware of that.

7 Q Was that part of your concerns when you were employed at
8 Eastern Magnesia Talc Company, Inc.? Did you get into that
9 area?

10 A No, not in those years I didn't. Subsequently I did.

11 Q When did you first get into that area?

12 A Mid 1970's I would say.

13 Q In conjunction to what at that time?

14 A There were allegations made by NIOSH concerning the Johnson
15 mine and I took it upon myself as part of my responsibilities to
16 study that matter very carefully and try to come forward with a
17 balanced program to be certain that we knew, we believed that
18 we knew and we went forward.

19 Q You are talking about the Johnson mine?

20 A No.

21 Q What mine?

22 A I was talking about Windsor Mills. This is after I left.

23 Q When the controversy arose in the 1970's, you were then
24 working at the Windsor company, Windsor Minerals?

25 A Yes.

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1 Q So your focus was at that company at that point?

2 A Yes.

3 MR. O'SHAUGHNESSY: You seem to be jumping
4 ahead and answering before his question is finished.

5 MR. SARNER: Can I ask one question for
6 clarification. You said there were allegations by NIOSH
7 concerning the Johnson mine. You were not talking about the
8 Johnson mine?

9 THE WITNESS: No. The allegation is the paper that
10 was produced by NIOSH identified various properties in the
11 State of Vermont and one of the properties that was referenced
12 was the Johnson mine. I had no association with that mine at
13 that time, but because it was a very broad allegation by NIOSH, I
14 became involved in a very thorough look at our operations.

15 Q Again, not the Johnson mine per se.

16 A No.

17 Q Are you familiar with who made that allegation as to the Johnson
18 mine being possibly involved?

19 MR. O'SHAUGHNESSY: We seem to be talking in
20 ambiguities. The way I hear it, it's not an allegation. Apparently
21 it's a paper.

22 THE WITNESS: Yes.

23 Q Let's be specific. In other words, the Johnson mine was one of
24 the mines that that paper --

25 A Was drafted about.

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1 Q At the time that you were working there -- This was not an issue.
2 This is not something you looked for or anybody was concerned
3 about at the Johnson mine at the time you were involved in that
4 mine through Eastern Magnesia Talc Company, Inc.?

5 A That is not correct. We were always interested in the
6 consistency and purity of the material that we were producing.
7 We were selling a mixture of the mineral talc and the mineral
8 magnesite. We weren't selling cinders. We weren't selling black
9 block. We weren't selling any extraneous materials so we
10 focused carefully on the production of the optimum qualities in
11 that mineral sweep.

12 Q Was there ever any testing done specifically of the talcs to
13 determine through analysis whether or not there was any
14 asbestos in those samples?

15 A At the Johnson mine during my period of employment?

16 Q Yes, specifically during your period of employment.

17 A Routine testing?

18 Q Any kind of testing.

19 A I cannot be precise, but the geologists who worked for us in the
20 summertime did comprehensive evaluations following the work
21 of Chidester in order for us to be assured that the conditions
22 that Chidester had identified still prevailed in the mine.

23 Q Who were those people?

24 A These were various people sometimes associated with the
25 University of Vermont. I'm sorry. I can't remember the names.

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1 Typically they would work for us for three or four months during
2 the summer. One of them I remember worked both summers
3 that I was there.

4 Q You referred to Chidester. Who was Chidester?

5 A He was a staff geologist for the United States Geological Survey
6 when I -- I only met him once, but he worked for a different
7 agency of government during the period of the second world war
8 that had to do with mineral resource evaluation.

9 Q What specifically was he looking for or analyzing that you relied
10 on? What was the issue?

11 A He came looking for steatite, but he wrote a very thorough
12 definition of the geological conditions and the mineralogical
13 consist of those deposits.

14 Q When was his work completed if you know?

15 A I don't know.

16 Q Approximately?

17 A I would say sometime between the 1940's and the mid 1960's.
18 I'm not certain.

19 Q Basically you were relying on that study that would have been
20 sometime in the 1940's to the 1960's?

21 A I used that to instruct myself on the nature of these ore bodies.

22 Q Are you aware of any subsequent studies that might have been
23 done with respect to the Johnson mine by any source?

24 A I'm aware that there were two or three theses written on the
25 origin of the deposit by graduate students at the

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1 University of Vermont. I never believed any of them figured it
2 out better than Chidester.

3 Q These were three graduate studies?

4 A I am aware of their existence. I didn't review them.

5 Q How did you become aware of those studies?

6 A I did a biographical search. I had in mind writing a book about
7 talc in Vermont and in the process of coming up with a
8 bibliography, I ran across reference to these in the state library.

9 Q And there were three studies?

10 A I believe there were three. I could be mistaken. One of them
11 may have been out of the state university of New York. Two of
12 them, I'm sure, were graduate students.

13 Q If I wanted to get ahold of those studies, how would I find them
14 today?

15 A At the geology library at the University of Vermont.

16 Q Are you familiar with what the studies found?

17 A No.

18 Q Was there any suggestion that they may have contradicted what
19 Chidester indicated?

20 A I have never reviewed them, but the title suggested they were
21 revisiting the genesis of the deposits, how were they formed,
22 why were they formed and so forth.

23 Q I'm a little bit confused. You said you were going to write a book,
24 I believe, or get into that. Is that something that just died so you
25 didn't go further with it? Is that what happened?

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1 A Uh-huh. I would rather go fishing.

2 Q Let me ask you this. Did anyone that you know of in the industry
3 pick up on what you were doing in terms of studying those or
4 analyzing those studies in terms of further review?

5 A Not that I am aware of.

6 Q Was there some suggestion that there were some newer
7 analytical techniques that were available in later years that might
8 not have been available to Chidester?

9 MR. O'SHAUGHNESSY: Suggestions where?

10 Q Are you aware of any analytical texts?

11 A Mineralogical analytical texts?

12 Q Yes.

13 A Not that I am aware of.

14 Q Obviously you don't really know anything about the particular
15 graduate studies?

16 A No.

17 Q I would have to get those to review those?

18 A Yes.

19 Q Would it be a fair statement that the Eastern Magnesia
20 Talc Company is the successor company to Eastern Magnesia
21 Talc Company, Inc.?

22 MR. O'SHAUGHNESSY: Note my objection. It's a
23 legal question.

24 THE WITNESS: I don't know.

25 MR. SARNER: Join the objection as to form as well.

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1 Q Specifically with respect to your affidavit, No. 3 where you are
2 referring to all of the talc sold to the tire and rubber industry by
3 Eastern Magnesia Talc Company, Inc., et cetera and referring to
4 that being mined from the Johnson talc mine, what years are you
5 referring to?

6 A As I stated earlier, I am specifically referring to the two years in
7 which I was employed and I am referring to undoubtedly
8 hearsay. I am referring to conversations that I held with the
9 manufacturing people and with the shipping people that these
10 clearly weren't new customers that had just arrived on the
11 scene. This was a line of business that they had enjoyed for
12 many years. I had that assumption from the conversations that I
13 had with those people.

14 Q When did those conversations take place? In other words, were
15 these conversations that arose after you were asked to prepare
16 this affidavit?

17 A No. These conversations arose during my employment there.
18 These folks worked for me.

19 Q Do you remember the names of those individuals?

20 A I was trying to remember Don's name and I can't remember.

21 Q Some of this may be repetitive, but I apologize. You really didn't
22 get into marketing; did you?

23 A No.

24 Q Would you really be the best one to prepare this affidavit in
25 terms --

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1 MR. O'SHAUGHNESSY: Objection.

2 Q Let me rephrase that question. Is there anybody alive today that
3 you know of who might be in a better position than you to
4 answer a question or item No. 3?

5 MR. O'SHAUGHNESSY: Let me object to the form.
6 It is not a question. No. 3 is his statement.

7 MR. KAUFMAN: Right.

8 MR. O'SHAUGHNESSY: This affidavit is based on his
9 knowledge. Now you are asking him if there is someone else
10 that can write a better affidavit than him based on his
11 knowledge. It doesn't make sense.

12 MR. KAUFMAN: I think he understands.

13 THE WITNESS: I don't believe so.

14 Q Let me ask you this. With respect to 1950, 1950 to 1963, would
15 it be a fair statement that you don't know what talcs would have
16 been shipped to the rubber industry during those years, personal
17 knowledge?

18 MR. O'SHAUGHNESSY: I don't know what you mean
19 by what talcs.

20 MR. KAUFMAN: From Eastern Magnesia
21 Talc Company, Inc. Does he have any knowledge about that.

22 MR. O'SHAUGHNESSY: He said he had the
23 knowledge when he was working there and discussing this with
24 the people he worked with during the time he was employed
25 there. That's what he said before.

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1 Q Is that what you said before?

2 A Yes and you should understand that in my conversations with
3 others, I am relying on those conversations reached back in
4 time. Whether they reached to 1950 or not, I have no way of
5 knowing at all. I was merely given to understand that these
6 were customers they always had. I have no definition of what
7 always meant and the dates 1950 and 1963 have no meaning to
8 me.

9 Q Would the Johnson mine have produced talc that would have
10 been used in the rubber industry?

11 A Yes.

12 Q Why is that? In other words, what kind of talc would you use in
13 the rubber industry as opposed to some other industry?

14 A Well, there are a number of factors that are engaged here. One
15 is economy, cost of the material. The other is the efficiency. It
16 is my understanding that the talc was used as a parting agent.
17 Therefore, per pound of talc, you want to cover the maximum
18 surface area so you reach towards a platy talc because you get
19 the maximum surface area per pound of material.

20 Q Would you be looking for a cheap type of talc; in other words,
21 less expensive talc to use in this fashion than you might use in
22 other industries?

23 A No. The price is determined by what the customer is willing to
24 pay, what it's worth to him and they are not going to buy an
25 exotic talc in order to do this job if, in fact -- It's a pragmatic

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1 product. It solves the problem of two pieces of rubber sticking
2 together. What's the most efficient way to do it.

3 Q Are you familiar with the competitors with Eastern Magnesia
4 Talc Company, Inc., in terms of the type of talc that might have
5 been produced at the time you were working for that company?

6 A They were in competition with -- I'm not sure in the rubber
7 market. No. I'm not familiar.

8 Q Would talcs used in the rubber market have been similar in type
9 and quality; in other words, would one company use a very fine
10 talc as opposed to talc that might be impure or would there be a
11 variance if you know?

12 MR. O'SHAUGHNESSY: Note my objection to the
13 form. I think it's confusing.

14 MR. KAUFMAN: Well, if he understands it.

15 THE WITNESS: I'm not sure I do understand.

16 MR. O'SHAUGHNESSY: Then let him ask it again.

17 Q Would it be more likely to use a talc in the rubber industry
18 because of the vast quantities you might need as a parting agent
19 to select a talc that might be somewhat impure because you are
20 looking for the cheapest kind of talc you can get?

21 MR. O'SHAUGHNESSY: Note my objection to the
22 form which contains a lot of assumptions in there that aren't
23 based on anything that this witness has said in terms of the
24 amount of talc used or whether it's cheap or not. It sounds like
25 you are trying to put words in his mouth.

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1 MR. KAUFMAN: I'm not.

2 MR. MALLOY: Lack of foundation as to particular use
3 by the rubber industry of the talc.

4 Q You can answer the question as best you can. If you can't, you
5 can tell me.

6 MR. O'SHAUGHNESSY: Let's hear the question read
7 back.

8 *(The reporter read back the last question.)*

9 MR. O'SHAUGHNESSY: Note my objection also. You
10 are asking him what a rubber company would need or use a talc
11 for and I think he stated he doesn't know that.

12 MR. KAUFMAN: Why don't we let the witness testify.

13 MR. O'SHAUGHNESSY: You are doing a good job
14 yourself.

15 THE WITNESS: I really don't know the basis of what
16 they made decisions on.

17 Q Was the purity similar between the Johnson mine and the
18 Hammondsville mine and the Waterbury mine of the talc?

19 A I don't know anything about Waterbury. The ore bodies were
20 essentially the same except for crystal size between the
21 Hammondsville and Johnson mine.

22 Q Was EMTAL always mined through the Johnson mine to the best
23 of your knowledge?

24 A To the best of my knowledge. I don't know what they call the
25 products that came from the Waterbury mine.

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1 Q Is it possible that prior to 1966, say in the early 1950's, that
2 EMTAL could have been mined at Hammondsville and/or
3 Waterbury to the best of your knowledge?

4 MR. O'SHAUGHNESSY: Note my objection based on
5 the last answer. He already answered that question. EMTAL
6 came from Johnson except he doesn't know about Waterbury.
7 Now you just asked it another way.

8 MR. KAUFMAN: I'm not sure his answer was clear.

9 Q Do you understand what my question is?

10 A I understand. I think you misunderstood an answer I gave.

11 Q That may be.

12 A In 1967 prior to the sale, the word EMTAL encompassed the
13 Johnson mine and mill. The Hammondsville mine, the
14 West Windsor mill and the Gassetts mill, that was all one
15 company who used the trade name EMTAL. When the
16 companies were separated, the trade name, as I said earlier,
17 went with the Johnson mine and mill and the products coming
18 out of the West Windsor and Gassetts mill were renumbered
19 with simple grade numbers.

20 Q Again, correct me if I am wrong because you know a lot better
21 than I do. Prior to 1966, the EMTAL talcs could have come from
22 a variety of mines?

23 MR. SARNER: Are we talking about the rubber
24 industry?

25 Q EMTAL talc could have come from a variety of mines; is that

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1 correct?

2 A It could have, but remember the identifying numbers that
3 characterized the location. They weren't just called EMTAL.
4 They were call EMTAL 41 or EMTAL 42.

5 Q How about EMTAL 41? Could that have come from various
6 mines prior to 1966?

7 A No.

8 Q Why is that?

9 A Because the economics of talc mining don't permit long distance
10 truck transport of ore from a mine to a mill. It's changed a little
11 bit in the 1990's, but clearly in the 1960's, no. It was unusual
12 for the Johnson mine to be seven miles from the Johnson mill, a
13 distinct economic disadvantage.

14 Q Now, these three studies that were done by graduate students,
15 they were specifically as far as you know related to the Johnson
16 mine; is that correct?

17 MR. O'SHAUGHNESSY: Objection. I think he said
18 they were theses.

19 MR. KAUFMAN: Whatever. That's fine.

20 THE WITNESS: I believe they were generic. They
21 talked about talc formation of talc deposits in Vermont. I believe
22 that was what I took from the titles.

23 Q Is it possible that EMTAL 41 may have had some elements of
24 asbestoform material prior to 1966?

25 A That requires conjecture and I really can't answer.

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 Q You can't answer that question?

2 A No.

3 Q Do you know anyone that could answer that question, the name
4 of anyone that is presently alive that could answer that question?

5 A No.

6 Q Were there any health warnings put on talc 41 that you know of?

7 A I'm not aware of what the labeling was.

8 Q When you say you relied on the Chidester report, why would you
9 have relied on the Chidester report? In other words, is there
10 some person that suggested that was a good report to rely on or
11 from some literature that you reviewed that cited the Chidester
12 report?

13 A I had worked in the talc industry in New York state where the
14 origin and the genesis of the deposits was distinctly and totally
15 different. When I came to work after being in the chemical
16 industry for 12 years, I needed to very quickly come to an
17 understanding of the nature of the deposit. He was clearly the
18 best source.

19 Q When you say he was clearly the best source, why do you take
20 that position? In other words, what is your basis for that
21 statement?

22 MR. O'SHAUGHNESSY: Note my objection to the
23 form of the question. You can answer.

24 THE WITNESS: He had spent a great deal of time in
25 those metals. I am skilled in the art and practice of mining and

By Mr. Kaufman

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1 geology relatively so I looked at his reports and I could
2 determine that this was not a graduate student. This was a
3 competent technical person who understood the variabilities
4 that were possible and hadn't decided the answer before he
5 wrote the paper so I recognized all that in reading this. I used it
6 as a guide and it didn't fail me over the years that I was there.

7 Q Are you suggesting then that you are somewhat suspect of the
8 work that might have been done by the graduate students?

9 MR. O'SHAUGHNESSY: Note my objection.

10 THE WITNESS: Not really. I didn't mean to infer
11 that. I wanted to make the distinction to understand that I
12 made the distinction. I didn't go hire someone to do a report
13 for me. I relied on the expert.

14 Q Are you familiar with the content of any other talc that you may
15 have been in competition with at Eastern Magnesia
16 Talc Company?

17 MR. O'SHAUGHNESSY: Other companies?

18 Q Let me be specific. Do you have any knowledge of the
19 R.T. Vanderbilt talcs?

20 MR. MALLOY: In what specific form?

21 MR. KAUFMAN: As to the mineral content of those
22 talcs.

23 MR. O'SHAUGHNESSY: Did he ever analyze those
24 talcs?

25 MR. KAUFMAN: We will get to that. I don't know.

By Mr. Kaufman

Roger N. Miller - June 12, 1991

1 THE WITNESS: Ask me again. I want to be sure I
2 understand.

3 Q Basically, my first question would be are you familiar at all and
4 then I will ask you how if you are familiar at all with the content
5 of the R.T. Vanderbilt talcs?

6 MR. MALLOY: Again, objection. There are a lot of
7 different talcs from a lot of different places.

8 MR. KAUFMAN: Fine. It's broad and we will narrow
9 it.

10 THE WITNESS: As I previously testified, I worked at
11 one time for the R.W. Loomis Talc Company which has become a
12 portion of the R.T. Vanderbilt Company. Whether Vanderbilt
13 ever mined the Loomis ore bodies, I have no knowledge at all. I
14 have no way of knowing that.

15 Q Was there any routine testing of competitors' talcs by your
16 company, Eastern Magnesia Talc Company, Inc., during the
17 period of time that you were there?

18 A Not to my knowledge. There could have been, but not to my
19 knowledge. It wouldn't have been done in our process control
20 laboratory.

21 Q Would it be a fair statement specifically that at no time prior to
22 '67 were you ever looking for asbestos in talc; in other words,
23 that was not an area that you got into?

24 MR. O'SHAUGHNESSY: We went all through this
25 before and the whole series of questions and answers. You are

By Mr. Kaufman

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1 opening up all those again. I believe the answer was that they
2 were always concerned with the purity of their talc.

3 Q That's fine, but specifically with asbestos, that was never -- That
4 was never a concern at that period of time?

5 MR. O'SHAUGHNESSY: Note my objection because
6 it's a concern to the extent that they were interested in pure
7 talc. That means talc and nothing but talc including all universe
8 of mills.

9 MR. KAUFMAN: I will take that answer.

10 THE WITNESS: In our examination to control the
11 quality of the products, we looked for any extraneous mineral
12 and asbestos happens to be a readily easily identified mineral
13 species in hand specimen and fine powders. While there was no
14 specific directive to do that, I believe that our quality control
15 that we used to regulate the operations were such that we would
16 not have missed asbestos if it were present.

17 Q Now you are talking by personal knowledge in 1966, 1967; is
18 that correct?

19 A Right.

20 Q Depending on how the mining might have occurred in prior
21 years, the quality of the talc could have varied; is that correct?

22 A It may have varied. I have no knowledge whether it did or
23 didn't, but product specifications didn't vary very much.

24 Q Is there any record that might exist today that would show any
25 attempts at analysis prior to the time you were there; in other

By Mr. Kaufman

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1 words, not 1966, 1967 but early in mid 1950's? Is there
2 anywhere we could go to get that information?

3 A The only resource I could point you to is Chidester's work. He
4 did very thorough analysis.

5 MR. KAUFMAN: I don't have any further questions.

6 MR. MALLOY: I have some.

7

8

E X A M I N A T I O N

9

BY MR. MALLOY:

10 Q As I understand it, when you first went to work at the Johnson
11 mine, you became aware that their talc was being used by the
12 rubber industry; is that correct?

13 A Uh-huh.

14 Q Was the rubber industry a significant portion or significant
15 customer of that mine's output?

16 A My recollection is that they were not if you mean over
17 25 percent. I didn't have that sense. I don't carry that sense
18 with me.

19 Q Do you recall what the other applications of the use of the talc
20 were?

21 MR. O'SHAUGHNESSY: From the Johnson mine?

22 MR. MALLOY: Yes.

23 THE WITNESS: They were used in paints, in the
24 paper industry, in plastics and in agricultural applications is my
25 recollection.

■ By Mr. Malloy

Roger N. Miller - June 12, 1991 ▸

1 Q Because of its particular use in the rubber industry, was there
2 any particular grade or mineralogical standard that you had to
3 keep in that talc?

4 A My recollection and my understanding was that Grade 41 was
5 specifically targeted at the rubber industry. It wasn't exclusively
6 targeted, but it was specifically targeted to the rubber industry
7 and the reason for that is that it is a partially beneficiated
8 product. It isn't just ground up ore, whole ore. Grade 41 was
9 made in a device called a double coned classifier and was, in
10 essence, an air elutriated talc. It contained a significantly higher
11 portion of platy materials and a significantly lower proportion of
12 the extraneous associated minerals and magnesite that was
13 associated with it.

14 Q And these platy materials apparently were well suited to act as
15 a parting agent in the rubber industry?

16 A My assumption is they were, yes.

17 Q I take it, then, that other talcs that were mined in that area and
18 I guess you were familiar with the Hammondsville mine weren't
19 as well suited as a parting agent for the rubber industry?

20 A No. The reason Hammondsville was not used in the rubber
21 industry is because it was ideally suited for cosmetic products
22 uniquely so because of the large plate size.

23 Q Would that be true probably about other mines in the country,
24 that they may not have talc as well suited as the Johnson mine?

25 MR. KAUFMAN: I will object to that question. It's

By Mr. Malloy

Roger N. Miller - June 12, 1991

1 speculative.

2 THE WITNESS: I don't know.

3 Q You have worked over the years in a number of different mines;
4 is that correct?

5 A Uh-huh.

6 Q A lot of the mines produce talc?

7 MR. O'SHAUGHNESSY: He testified as to how many
8 mines he has worked in and whether that's a large number or
9 not, that's your characterization.

10 MR. MALLOY: He can say yes or no.

11 THE WITNESS: I have worked in four ore and talc
12 deposits.

13 Q The other talc deposits that you have worked in, were they as
14 well suited as far as the platey effect that you talked about as the
15 Johnson mine talc?

16 MR. O'SHAUGHNESSY: Suited for what?

17 MR. MALLOY: The platey effects we talked about
18 before as a parting agent.

19 MR. SARNER: What platey effect?

20 MR. MALLOY: It's a note I put down. He mentioned
21 the size of the plates.

22 MR. O'SHAUGHNESSY: Use your own language in
23 answering the question.

24 Q If you don't understand the question, let me know.

25 A The ore bodies that I am familiar with vary in that characteristic

■ By Mr. Malloy

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1 and the markets that they serve are a function of the degree to
2 which they exhibit that characteristic --

3 MR. O'SHAUGHNESSY: State the characteristics.

4 THE WITNESS: -- which is the micaceous platey
5 character. A deck of cards exhibits a perfect talc characteristic
6 and large platelets are uniquely valuable because they can build
7 toiletry products, but they are not necessary for other
8 applications. I don't know that.

9 Q Are you familiar with the New York talcs?

10 A I am familiar with the talcs I saw when I worked for Loomis.

11 Q As far as you know, were they as well suited as the Johnson mine
12 talcs were for use as a parting agent in the rubber industry?

13 MR. KAUFMAN: What mines?

14 MR. MALLOY: The ones he is familiar with.

15 MR. O'SHAUGHNESSY: I also object because your
16 question calls -- You are asking him whether they were well
17 suited. That would be up to persons in the rubber industry using
18 them and the witness I don't think is competent to testify about
19 what the rubber industry thought was suitable or not or
20 comparing one talc to another.

21 THE WITNESS: In my role at Loomis as mine
22 engineer, I spent all my time looking through a transit.

23 Q You are not familiar with --

24 A No.

25 Q That's fine. While you were with Loomis, were you aware of the

■ By Mr. Malloy

Roger N. Miller - June 12, 1991

1 use of their talcs at all in the rubber industry?

2 A No.

3 MR. MALLOY: I don't have any other questions.

4 MR. SARNER: I have no questions at this time.

5 MR. KRISTUFEK: I do based upon what Mr. Kaufman
6 raised.

7

8 FURTHER EXAMINATION

9 BY MR. KRISTUFEK:

10 Q Mr. Miller, before when you were talking about your position at
11 Windsor, you referenced a NIOSH paper that talked about the
12 Johnson mine.

13 A Talked about the talc mines in Vermont.

14 Q About when did that come out? Can you give me a time?

15 A I have been sitting here trying to remember. Mid 1970's, I
16 believe, but I'm not certain. I cannot give you a day.

17 Q Did it specifically mention the Johnson mine?

18 A I don't believe that it did. It identified companies A, B and C,
19 but a person familiar with the operation of Vermont can
20 recognize by the size which companies they were talking about.
21 I believe that's the way it was characterized.

22 Q Were you able to recognize the Johnson mine between the
23 A, B and C?

24 A I was able to recognize the Eastern Magnesia Talc Company
25 between A, B and C.

By Mr. Kristufek

Roger N. Miller - June 12, 1991

1 Q What was the reference that NIOSH made? What did they talk
2 about?

3 MR. O'SHAUGHNESSY: I object. You are asking him
4 about a scientific paper with a broad question, what did they talk
5 about.

6 Q Mr. Miller, what do you remember that paper was about?

7 A It was a retrospective epidemiological study of the causes of
8 mortality in talc miners in Vermont.

9 Q Do you recall whether or not that included an analytical
10 description of the talc taken from deposits in Vermont?

11 A I'm not certain, but I believe it did.

12 Q Before when Mr. Kaufman and you were talking about prior to
13 1966, I got a little bit confused and maybe you can clear
14 something up for me. I think the question was prior to 1966, do
15 you know whether or not a product which may have come from
16 Hammondsville or even Waterbury if it was operating at that time
17 could have been labeled EMTAL 42?

18 A I don't know that with certainty, but I know the practice and it
19 is extremely unlikely. I can't imagine that ever happening. The
20 milling processes were different. The ore bodies were different.
21 Each of the deposits is a little bit different. I think it's
22 extremely unlikely that that would have occurred.

23 Q Do you know when the numerical system for the different mills
24 came into play?

25 A I don't.

By Mr. Kristufek

Roger N. Miller - June 12, 1991

1 Q Before when you were talking to Mr. Kaufman, you made
2 reference to the fact that EMTAL was in the business of selling
3 the mineral talc with -- Was it magnesite?

4 A Uh-huh.

5 Q You did not sell cinder. You did not sell black wall. The cinder
6 that you saw at Johnson, how was that removed?

7 A They would mine around it and the talc cinder mixture would be
8 taken off and hauled off as waste. They had two bins in the head
9 frame. They would take ore to one of the bins. They would take
10 waste to the other so if you go to the Johnson mine today, you
11 see the great waste piles of material that were non-commercial
12 materials that were encountered in the mine.

13 Q So this was a form of hand coning the ore on a very large scale?

14 A Only they really didn't do that. They would blast a round and if
15 that round had any contaminant in it at all, it was all wasted even
16 though it might be 95 percent talc.

17 Q How would you determine whether or not there was a cinder or
18 an intrusion in the center of a chunk?

19 A It didn't occur that way. It occurred as discrete masses.

20 Q I think we talked before they could range from an inch to feet in
21 size?

22 A Uh-huh. You would see them. They are very dark colored, dark
23 green or black.

24 Q Would you see an inch particle in the center of a chunk of talc
25 ore four or five feet?

■ By Mr. Kristufek

Roger N. Miller - June 12, 1991)

1 A If you blasted a round, looked at the muck pile and looked at the
2 margin that you just broke through and saw a black streak, you
3 wouldn't load that ore.

4 Q Something else that you and Mr. Kaufman talked about, testing of
5 the ore for asbestos and we talked before about routine testing
6 for brightness. How often were these kind of tests done while
7 you were there?

8 MR. O'SHAUGHNESSY: Note my objection. He
9 testified at length about the testing that was done and the
10 question, I think, misquotes the witness.

11 Q I can separate them if you would like. You talked to Mr. Kaufman
12 about testing of the ore for asbestos --

13 MR. O'SHAUGHNESSY: Note my objection. He
14 testified about testing of the ore.

15 MR. KRISTUFEK: That's what I am talking about,
16 the ore. We can take either one first.

17 Q We can talk about the routine kind of testing that you talked
18 about for extraneous material. How often was that done?

19 A About every four hours.

20 Q What about the testing for asbestos?

21 MR. O'SHAUGHNESSY: It's my recollection that
22 the testimony regarding testing about and concerning asbestos
23 was that the testing was for the purity of the talc excluding
24 all kinds of contaminants, whatever minerals they were
25 which would necessarily include that kind of fiber if it were

By Mr. Kristufek

Roger N. Miller - June 12, 1991

1 seen.

2 Q Is that correct?

3 A Yeah. We were looking for extraneous minerals.

4 Q There was no discrete fiber analysis done?

5 A No.

6 Q No x-ray infraction?

7 A No.

8 Q No T.E.M.?

9 A Except the ongoing work that was done by Chidester through a
10 long period of time in those properties.

11 Q Chidester is in your mind the most definitive source about what
12 was in that ore body?

13 A I think so. It is a valuable historical record.

14 Q Let me switch if I can to your time at Loomis Talc. You said that
15 was the Gouverneur district. The talc that was there, was that
16 pseudomorphosed after any particular mineral?

17 A I'm not certain.

18 Q Do you know what the mineralogical composition of that ore
19 was?

20 A I know that it was a metamorphic derivative of a silicated
21 dolomite. The magnesium came out of the dolomite and it was
22 free silicate in association with the dolomite. This was
23 metamorphosed talc by way of a different mechanism
24 than our talc. The visual appearance of those talcs
25 were dramatically different than the visual appearance of these

■ By Mr. Kristufek

Roger N. Miller - June 12, 1991)

1 talcs.

2 Q The Loomis material, was that the mineral talc or was that the
3 mineral talc and other things?

4 A I believe it was a mixture of the mineral talc and other things,
5 but I don't know what the other things were. I was the engineer
6 looking through the transit.

7 Q So you weren't involved at all with the analysis?

8 A No.

9 MR. KRISTUFEK: That's all I have, sir.

10 MR. KAUFMAN: No further questions.

11

12 *[The deposition concluded at 12:20 p.m.]*

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CUNNINGHAM, MAGGIE L., et al,	No. 88-826653 NP
WILLIAMS, LEO, et al,	No. 88-826656 NP
PETERS, MAXINE, et al,	No. 88-826658 NP
DUDLEY, WALTER, et al,	No. 88-826700 NP
MILES, LOUIS, et al,	No. 88-826810 NP
BARBER, THOMAS P., et al,	No. 88-826811 NP
HENDERSON, SAMUEL, et al,	No. 88-826813 NP
SCALES, LAURA, et al,	No. 88-826918 NP
TISDALE, ALEXANDER, et al,	No. 88-826807 NP
STEVENSON, PATRICIA, et al,	No. 88-827261 NP
STOKES, JESSIE, et al,	No. 88-827262 NP
PHILLIPS, LAURA MAE, et al,	No. 88-827263 NP
BOMMARITO, PETER, et al,	No. 88-827376 NP
MANNING, LEO, et al,	No. 88-827378 NP
McDONALD, JOHN F., et al,	No. 88-827379 NP
PORTER, FELIX, et al,	No. 88-827381 NP
FLEMING, LOUIS, et al,	No. 88-827383 NP
HALISON, DOROTHY, et al,	No. 88-827453 NP
ALSTON, JAMES DAVID, et al,	No. 88-827455 NP
FREEMAN, WOODROW, et al,	No. 88-827459 NP
ANTHONY, JOSEPH, et al,	No. 88-829107 NP
BAILEY, JOE MEDFORD, et al,	No. 88-829109 NP
GANT, PAULINE, et al,	No. 88-829113 NP
STEPHENS, GARLIN, et al,	No. 88-829115 NP
CUNNINGHAM, JUDGE, et al,	No. 88-829116 NP
COLEMAN, JOSEPH, et al,	No. 88-829117 NP
OWENS, JAMES, et al,	No. 88-829118 NP
Plaintiffs,	
vs.	
OWENS-CORNING FIBERGLAS CORPORATION, et al.,	
Defendants.	

NOTICE OF READINESS
OF TRANSCRIPT FOR
READING AND SIGNING

cc: Stephen I. Kaufman, Esq.
Eric S. Sarnier, Esq.
John C. O'Shaughnessy, Esq.

Robert O. Kristufek, Esq. Esq.
Michael Malloy, Esq.

ROGER N. MILLER
10101 Manitow Beach Drive Northeast
Bainbridge Island, Washington 98110

Notice is hereby given that the transcript of your deposition taken June 12, 1991 in the above cause is ready for your reading and signing. *Mr. Leedum has a copy of the transcript along with the original signature/correction pages which can be sent to you to read and sign.* If you prefer, the original transcript is available to read and sign at 316 Occidental Avenue, Suite 216, Seattle, Washington. *Please call and make an appointment if you will be coming to our office.*

You have thirty (30) days from the date of this notice to read and sign your deposition transcript, or state in writing your refusal to sign, or state in writing that you waive your right to sign. Failing to do so, signature shall be deemed waived and the transcript will be filed without change with the party ordering the transcription.

Dated at Seattle, Washington, 25th day of June 1991.

LESLEE J. UNTI
Court Reporter - CSR#UNTI*LJ502CA

cc: Stephen I. Kaufman, Esq.
Eric S. Sarnier, Esq.
John C. O'Shaughnessy, Esq.

Robert O. Kristufek, Esq. Esq.
Michael Malloy, Esq.

■ 316 Occidental Ave. S., Suite 216, Seattle WA. 98104 (206)447-0872 LESLEE UNTI & CO ■

A F F I D A V I T

STATE OF WASHINGTON)
COUNTY OF KING) ss.

I have read the foregoing transcript of my deposition taken June 12, 1991. The transcript is true and accurate except for all corrections and/or changes, if any, indicated by me on the inserted correction/change page(s).

ROGER N. MILLER

SUBSCRIBED AND SWORN to me this _____
day of June 1991.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My appointment expires _____

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Leslee J. Unti, the undersigned Washington Certified
Shorthand Reporter, CSR#UNTI*LJ502CA, and officer of the Superior
Court under my commission as Notary Public in and for the State of
Washington, hereby certify that the foregoing deposition upon oral
examination of ROGER N. MILLER was taken before me on
June 12, 1991;

That each witness before examination was first duly sworn by me
to testify truthfully; that the transcript of the deposition is a full, true
and correct transcript of the testimony, including questions,
objections, motions and exceptions of counsel made and taken at the
time of the foregoing examination;

That I am neither attorney for, nor relative or employee of any of
the parties to the action; that I am not relative or employee of any
attorney or counsel employed by the parties hereto, nor financially
interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal
this _____ day of June 1991.

NOTARY PUBLIC in and for the State of
Washington, residing at Seattle.
My appointment expires 10-6-92.